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**THE
COMMERCIAL LAWS OF THE WORLD**

VOLUME XVIII

**BRITISH DOMINIONS AND PROTECTORATES
IN AUSTRALASIA**

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AMERICAN EDITION

THE COMMERCIAL LAWS OF THE WORLD, EDITED BY THE HON. SIR THOMAS EDWARD SCRUTTON, JUDGE OF THE KING'S BENCH DIVISION OF THE HIGH COURT OF JUSTICE, ENGLAND (CONSULTING EDITOR), WILLIAM BOWSTEAD, OF THE MIDDLE TEMPLE, BARRISTER AT LAW, LONDON (GENERAL EDITOR), CHARLES HENRY HUBERICH, J. U. D. (HEIDELBERG), D. C. L. (YALE), LL. D. (MELBOURNE), COUNSELLOR AT LAW, BERLIN AND PARIS, PROFESSOR OF LAW IN THE LAW SCHOOL OF THE LELAND STANFORD JUNIOR UNIVERSITY (CALIFORNIA)

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THE COMMERCIAL LAWS OF THE WORLD

COMPRISING

THE MERCANTILE, BILLS OF EXCHANGE, BANKRUPTCY
AND MARITIME LAWS OF ALL CIVILISED NATIONS

TOGETHER WITH

COMMENTARIES ON CIVIL PROCEDURE,
CONSTITUTION OF THE COURTS, AND
TRADE CUSTOMS

IN THE ORIGINAL LANGUAGES INTERLEAVED
WITH AN ENGLISH TRANSLATION

CONTRIBUTED BY

NUMEROUS EMINENT SPECIALISTS OF ALL NATIONS

BRITISH EDITION

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THE COMMERCIAL LAW
OF
AUSTRALIA, NEW ZEALAND,
FIJI,
AND THE PACIFIC ISLANDS

BY

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Australia and New Zealand.

Introduction.¹⁾

I. The Commonwealth of Australia.

Spanish, Portuguese, French, and Dutch navigators have claimed the honour of discovering the continent of Australia, but we have no authentic accounts of discoveries before the beginning of the seventeenth century, when Dutch navigators explored a considerable part of the Australian coast line. The chief credit for discoveries is due to Tasman (1642) and to Captain Cook (1768—1777). The settlement of Australia began with the arrival of Captain Phillip at Botany Bay (1788). Attempts to make settlements in Victoria (then Port Phillip) in the first years of the nineteenth century were unsuccessful, and it was not until 1835—1836 that settlements were made. Tasmania (then Van Diemen's Land) received its first settlements in 1803 and 1804, South Australia in 1836, Queensland in 1824, and Western Australia in 1829.

1. Commonwealth.

Commonwealth and States.

Nominally New South Wales once comprised the whole of the Australian continent east of the 129th meridian, Tasmania, and the adjacent islands, and for a short period (1839—1841) New Zealand. In 1825 Tasmania became a separate colony, and this was followed by the separation of Victoria (1850) and Queensland (1859). Serious conflicts arose, notably between New South Wales and Tasmania, on the subject of the tariff, and in 1846 Sir Charles Fitzroy, then Governor of New South Wales, suggested that in view of the great distance from the mother-country and the length of time that must elapse before the decision of the Home Government upon measures passed by the colonial legislatures could be obtained, it would be to the interests of the Australian colonies "if some superior functionary were to be appointed to whom all measures adopted by the local legislatures affecting the general interests of the mother-country, the Australian colonies, or their inter-colonial trade should be submitted by the officers administering the several governments before their own assent is given".

The Constitution Bill of 1850, as originally introduced by Earl Grey, provided for the establishment of a general executive and legislative authority for matters of common concern of the Australian colonies. The scheme for a general authority failed of adoption, but Sir Charles Fitzroy was appointed (1851) "Governor-General of all Her Majesty's Australian Possessions including the Colony of Western Australia", but in 1861 the commission of Governor-General was not renewed. In 1853 committees of the legislatures of New South Wales and Victoria recommended schemes of federation. In the succeeding years conferences were held, memorials transmitted, and resolutions adopted, all looking towards a federation of the Colonies. Nothing however was accomplished until the Act (48 & 49 Vic. c. 60) authorising the establishment of the Federal Council of Australasia (14th August, 1885). But the Act creating the Council provided neither for a federal executive nor for a federal judiciary. The Council was merely a legislative body with very limited powers. Its functions were mainly advisory. New South Wales and New Zealand never became members of the Council, South Australia withdrew after being represented at one session, Fiji was represented only at the first session, and Western Australia was not represented at the session of 1891. Only nine acts were passed, and the Council

¹⁾ The writer desires to express his thanks to the Colonial (or Chief) Secretaries of Queensland, Tasmania, Victoria, and Western Australia, and to Sir Samuel J. Way, Bart., Chief Justice of South Australia for many courtesies in transmitting copies of acts and for other information; to the Hon. J. H. Plunkett Murray, Chief Justice of Papua, for information concerning the laws of the Territory of Papua; and to S. Newton Daly, Esq., Secretary of the Incorporated Law Institute of New South Wales, Charles Emmerton, Esq., of Melbourne, F. W. Richards, Esq., LL. D., of Adelaide, and Mr. John Schutt, Librarian of the Supreme Court Library, Melbourne, for assistance in preparing the legal bibliography of Australia.

soon ceased to be of consequence. "The best that can be said of the Council — but that is not a little — is that, far from exhibiting a natural jealousy of schemes which involved its own extinction, it did good service in fostering the cause of national union"¹). The Federal Council of Australasia Act was repealed by the Commonwealth Constitution Act²).

The National Australasian Convention representing all of the Colonies met at Sydney in 1891, adopted resolutions embodying the fundamental principles which should underlie the federation, and appointed committees to draft a constitution. Enabling Acts were passed in the several Colonies, and in 1897 and 1898 the Federal Convention was held at Adelaide, Sydney, and Melbourne. The constitution as proposed by the Convention and sanctioned by popular vote, with some amendments, was embodied in the Commonwealth of Australia Constitution Act (63 & 64 Vic. c. 12) of 9th July, 1900. The Commonwealth embraces the States of New South Wales, Victoria, Tasmania, South Australia, Queensland, and Western Australia.

The Commonwealth Constitution is modelled upon that of the United States, creating a federal government in which the Commonwealth Government is one of enumerated powers, with an executive, a legislative, and a judicial department. The Constitution "and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State, and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth"³). "When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall to the extent of the inconsistency be invalid"⁴). The supremacy of the federal Constitution and laws is thus secured, and is further safeguarded by the provisions relating to the powers of the Commonwealth judiciary⁵). Residuary governmental power is in the States. The State constitutions remain in force, save in so far as they contain provisions inconsistent with the Commonwealth Constitution⁶), and every power of the Parliament of a State, unless it is a power exclusively vested in the Parliament of the Commonwealth or withdrawn from the Parliament of the State, continues, as at the establishment of the Commonwealth⁷). Laws in force in the several States relating to any matter within the powers of the Parliament of the Commonwealth (e. g. laws relating to bills of exchange, bankruptcy and insolvency, foreign corporations, etc.), in so far as they are not inconsistent with the provisions of the Commonwealth Constitution, continue in force, and, until provision is made in that behalf by the Parliament of the Commonwealth, the Parliament of the State has full powers of alteration and repeal⁸). State laws, and, in the absence of statutory provision, the common law of England, except where inconsistent with the provisions of the Constitution or laws of the Commonwealth, are binding on all courts exercising federal jurisdiction within the State⁹).

It is not the province of the present work to discuss the limits inter se of the powers of the Commonwealth and the States. Much is specifically provided for in the Constitution, but, as in the United States, the greater part must be left to judicial determination¹⁰). It must suffice here to enumerate briefly the principal matters bearing on commercial law contained in the Constitution. Subject to the limitations imposed by the Constitution, the Commonwealth Parliament has power to make laws with respect to: 1. Trade and commerce with other countries, and among the States; 2. Bounties on the production or export of goods; 3. Postal, telegraphic, telephonic, and other like services; 4. Quarantine; 5. Light-houses, light-ship, beacons, and buoys; 6. Fisheries in Australian waters beyond territorial limits; 7. Currency, coinage, and legal tender; 8. Banking, other than State banking, and State banking extending beyond the limits of the State concerned, the incor-

¹) Moore, *Commonwealth of Australia*, p. 39. — ²) § VII. The last meeting of the Council was held in 1899. — ³) *Commonwealth Constitution*, § V. — ⁴) *Ibid.* § 109. — ⁵) *Ibid.* §§ 71—77, discussed *infra*. — ⁶) *Commonwealth Constitution*, § 106. — ⁷) *Ibid.* § 107. But subject to the limitations imposed by the Colonial Laws Validity Act, 1862 (28 & 29 Vic. c. 63), § 2. — ⁸) *Ibid.* § 108. — ⁹) *Judiciary Act*, 1903 (No. 6 of 1903) §§ 79, 80. See also *ibid.* § 68, — ¹⁰) Consult Quick and Garran's *Annotated Constitution of the Australian Commonwealth*. Moore's *Constitution of the Commonwealth of Australia*, Clark's *Australian Constitutional Law* (2d ed.).

poration of banks, and the issue of paper money; 9. Insurance, other than State insurance, and State insurance extending beyond the limits of the State concerned; 10. Weights and measures; 11. Bills of exchange and promissory notes; 12. Bankruptcy and insolvency; 13. Copyrights, patents, designs, and trade marks; 14. Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth; 15. Immigration and emigration; 16. Naturalization and aliens; 17. The people of any race, other than the aboriginal race in any State, for whom it is deemed necessary to make special laws; 18. The relations of the Commonwealth with the Islands of the Pacific; 19. Railway construction and extension in any State, with the consent of that State; 20. Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law; 21. The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which could at the establishment of the Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia¹).

Sources of law.²)

The Australian States belong to the class of colonies acquired by settlement or occupancy by English subjects. The general rule therefore applies to them, namely, that the English law (both statutory and common law) as it existed in England at the time of the settlement, in so far as it was applicable to the local conditions, became the law of the new possession. In most of the Colonies this matter is specifically provided for either by an Imperial or by a local act of Parliament³).

The sources of law in the Australian States are the following:

1. Acts of the Imperial Parliament expressly or impliedly made applicable to all or some of the Colonies. It includes all Acts of Parliament intended to bind the Colonies, whether passed before or after the settlement.
2. Statutory orders and regulations made by the Crown under a power conferred by an Act of the Imperial Parliament.
3. Prerogative orders, charters, and letters patent issued by the Crown.
4. Acts of the Parliament of the Commonwealth.
5. Acts of the Federal Council of Australasia⁴).
6. Acts of the State Parliament.
7. Orders, rules and regulations made under power conferred by an Act of the Commonwealth Parliament.
8. Orders, rules, and regulations made under power conferred by an Act of the State Parliament.
9. The law of England (or in the case of Victoria and Queensland the law of New South Wales, at the time of the separation) as it existed at the date named in the Imperial or local Act adopting the same, or, in the absence of such an Act, as it existed at the date of the settlement. This includes both statutes and common law, but is limited to such laws as are applicable to the local conditions and circumstances. Whether a particular law is applicable to the local conditions is a question for judicial determination.

The last named source is by far the most extensive and important. The English common law relating to the formation, interpretation, operation, transfer, and discharge of contracts remains substantially unmodified. In commercial legislation, in general, Australia has been content to follow the enactments of the mother country. The colonial acts relating to partnership, sale of goods, factors, bills of

¹) Commonwealth Constitution, § 51. — ²) See also the excellent chapter on Sources of the Laws and Institutions of the Colonies, in Moore, *Commonwealth of Australia*, pp. 1—18 (also contained in the *Journal of Comparative Legislation*, N. S., No. V), which has been freely used in this section. — ³) See below, sub 2. — ⁴) The Act authorising the Federal Council of Australasia was repealed by the Commonwealth of Australia Constitution Act "but so as not to affect any laws passed by the Federal Council of Australasia and in force at the establishment of the Commonwealth. Any such law may be repealed as to any State by the Parliament of the Commonwealth, or as to any colony not being a State by the Parliament thereof". — Commonwealth Constitution § VII. New South Wales was never a member of the Federal Council.

lading, bills of exchange, and secret commissions are almost exact copies of the Imperial acts. Slightly greater independence is shown in the legislation relating to bankruptcy, but here too, in the main, the Imperial acts of 1869 and 1883 are followed. The companies acts are based on the Imperial acts of 1862 and the following years, but also embody some provisions contained in draft bills not adopted by Parliament. Provision is also made in all of the States for the registration and control of foreign companies, and in Queensland special provision is made for companies registered in other parts of the British dominions¹).

The Commonwealth Act relating to sea-carriage of goods is largely based on the Harter act enacted by the United States Congress. The Australian Industries Preservation Acts, 1906—1908, adopt a number of the provisions of the United States Anti-Trust Act, but are far more sweeping in their provisions.

The same conservatism that marks the legislation is observable in the judicial decisions relating to commercial matters. The colonial acts being based on the English Acts, the Australian courts have, in general, followed the interpretation given to the provisions by the English courts. Uniformity of interpretation has also been secured by the circumstance that the Privy Council is a common court of appeal. A further unification of the common law and uniformity of interpretation of the statutes is secured by the High Court acting as a general court of appeal from all of the States. With the exercise of the vast powers over foreign and interstate trade, currency, banking, insurance, bills of exchange, bankruptcy, and corporations vested by the Constitution in the Commonwealth Parliament we may look forward to a complete uniformity in the commercial law of the Commonwealth of Australia.

2. States.

a) New South Wales.

By Letters Patent, and a commission dated 2d April, 1787, made under an Act of Parliament of 1784 (24 Geo. III. c. 56), and an Order in Council of 6th December 1786, Captain Arthur Phillip was appointed Governor and Vice-Admiral of the Territory of New South Wales "situated on the east part of New Holland". The Governor was empowered to make orders for the good government of the territory, and by virtue of this power he exercised wide legislative powers, creating new crimes and offences and modifying the application of English law. For these fundamental alterations in the law there was no express legislative authority. The Act of Parliament, 27 Geo. III. c. 2, authorised the Crown to establish a criminal court for the trial of treasons, felonies, and misdemeanours. No provision was made for civil courts. The Crown in the exercise of its prerogative created courts of civil jurisdiction with power to deal with civil cases in a summary way "according to the law of England". It is generally conceded that the legislative power conferred on the Governor as well as the establishment of the civil courts was in excess of the constitutional powers of the Crown²).

From 1823 to 1842 the government of New South Wales was based first on the temporary Act 4 Geo. IV. c. 96 (1823) and subsequently on the Charter of Justice of 13th October, 1823, promulgated 17th May, 1824, and the Act 9 Geo. IV. c. 83 (1828). The military courts established in 1787 were abolished, and courts organised on English models were established. Legislative power was vested in a Council appointed by the Crown, and English law was adopted. Partially representative government was introduced by the Act 5 & 6 Vic. c. 76 (1842), and full responsible government by the Act 18 & 19 Vic. c. 54 (1855). The first Parliament under the new constitution assembled 22d May, 1856. Upon this constitution, as subsequently amended, the present government is based.

All laws in force in England on 25th July, 1828, in so far as applicable to the circumstances of the Colony, were adopted by the Act 9 Geo. IV. c. 83³). In general,

¹) See Chronological Tables of Legislation, pp. 9—16, *infra*. — ²) Quick and Garran, Annotated Constitution of the Australian Commonwealth, pp. 35, 36, and authorities there cited. Cp. Cooper v. Stewart, 14 A. C. 286. — ³) "All laws and statutes in force within the realm of England at the time of the passing of this Act (not being inconsistent herewith, or with any Charter, or Letters Patent, or Order in Council, which may be issued in pursuance hereof), shall be applied in the administration of Justice in the courts of New South Wales and Van Diemens' Land respectively, so far as the same can be applied within

the English Acts of Parliament relating to commercial matters have been followed in the legislation of New South Wales, and in the other states. It is noteworthy that the law relating to sale of goods has not been codified in New South Wales.

b) Victoria.

In 1842 began a movement for the separation of the southern part, known as the District of Port Phillip, from the Colony of New South Wales. This separation was effected by the Act 13 & 14 Vic. c. 59 (1850) whereby the District of Port Phillip was erected into the Colony of Victoria. By virtue of this Act the Legislative Council of New South Wales passed two acts, one in reference to the judicial administration in Victoria (N. S. W. 14 Vic. No. 45), and the other in regard to the constitution of the Legislative Council (N. S. W. 14 Vic. No. 47). The formal establishment of the new Colony took place on 1st July, 1851, and the Legislative Council of Victoria formally convened on the 11th November following. Full responsible government was granted to the Colony by the Act 18 & 19 Vic. c. 55 (1850). The Constitution then granted has been amended from time to time.

All laws in force in New South Wales on 1st July, 1851, were continued in force. (Acts Interpretation Act, 1890 [No. 1058] § 3.)

c) Tasmania.

Under the Act 4 Geo. IV. c. 96 (1823) the Crown was empowered to erect Tasmania into a Colony separate from New South Wales, and in 1825 the separation was proclaimed. Changes in the government of the Colony were made by the Acts 9 Geo. IV. c. 83 (1828) and 5 & 6 Vic. c. 76 (1842) but representative institutions were not granted until 1850 (13 & 14 Vic. c. 59). By virtue of the power conferred by the last-named Act the Legislative Council in 1854 passed the so-called "Constitution" (18 Vic. No. 17) under which full responsible government is granted to the Colony. The first session of the new legislature was convened 2d December, 1856.

The law of England as it existed on 25th July, 1828, in so far as applicable to the circumstances of the Colony, was adopted, as the law of the Colony (9 Geo. IV. c. 83, § 24).

d) South Australia.

South Australia was authorised to be established as a British Province by the Act 4 & 5 Wm. IV. c. 95 (1834), and the necessary proclamation was made 28th December, 1836. In 1841 South Australia became a Crown Colony, and in 1842 the Parliament passed an Act to provide for its government by a nominated Legislative Council (5 & 6 Vic. c. 61). In pursuance of the power conferred by the Act 13 & 14 Vic. c. 59 (1850) the Legislative Council passed the Constitution Act (1857) which, with its amendments, constitutes the present fundamental law of South Australia.

The law of England as it existed on 28th December, 1836, so far as applicable, became the common law of the Colony. The Act 4 & 5 Wm. IV. c. 95 (1834) expressly exempts South Australia from laws enacted before that date in any other part of Australia.

e) Queensland.

Queensland originally formed the Moreton Bay District of New South Wales, and as early as 1842 the Crown was authorised by Acts of Parliament (5 & 6 Vic.

the said Colonies. And as often as any doubt shall arise as to the application of any such laws or statutes in the said Colonies respectively it shall be lawful for the Governors of the said Colonies respectively, by and with the advice of the Legislative Councils of the said Colonies respectively, by ordinances to be by them for that purpose made, to declare whether such laws or statutes shall be deemed to extend to such Colonies, and to be in force within the same, or to make and establish such limitations and modifications of any such laws and statutes within the said Colonies respectively as may be deemed expedient in that behalf". — 9 Geo. IV. c. 83, § 24. This has been construed as not applying more to procedure on the one hand nor introducing the whole law of England on the other, but putting the colonies in the same position as if they had been founded on 25th July, 1828. — Moore, Commonwealth of Australia, p. 13.

c. 76, as amended by 13 & 14 Vic. c. 59) to form a separate Colony out of this District. This power was confirmed by the Act 18 & 19 Vic. c. 54 (§ 7) but it was not until 6th June, 1859, that Letters Patent were issued erecting the Moreton Bay District into a separate Colony under the name of Queensland. By the Act 24 & 25 Vic. c. 44 (1861) the powers thus exercised were confirmed. The Order in Council provided for a responsible government of the Colony. This Order in Council was substantially re-enacted in the Queensland Act of 1867 (31 Vic. No. 38), which forms the basis of the present constitution.

By the Act of 1867, just mentioned (§ 33), the law in force in New South Wales at the date of the separation was continued in force in Queensland.

f) Western Australia.

The first Imperial statute relating to the government of Western Australia is the Act 10 Geo. IV. c. 22 (1829). This Act vests the legislative power in the King and Privy Council, and also authorises the Crown to delegate the legislative power to any three or more persons resident in the settlement. By the Act 13 & 14 Vic. c. 59 (1850) the formation of a Legislative Council was authorised, upon presentation of a petition to that effect signed by one-third of the householders within the Colony. But it was not until 1870 that Western Australia was granted a Legislative Council. Full responsible government was granted to the Colony by the Act 53 & 54 Vic. c. 26 (1890), which, with its amendments, constitutes the present constitution of the Colony. All statutes of a general nature in force in England on 1st June, 1829, were adopted as the law of the Colony¹).

3. Territory of Papua.

British New Guinea was declared a British possession by Letters Patent of 8th June, 1888, and on 4th September, 1888, was formally annexed to the British Crown. The western boundary was defined by treaty with the Netherlands of 16th May, 1895. By Order in Council of 19th May, 1898, certain islands and reefs to the north of Queensland, formerly belonging to that Colony, were annexed to British New Guinea.

By Letters Patent of 18th March, 1902, British New Guinea was declared a territory of the Commonwealth of Australia, upon proclamation of the Governor-General of Australia. This proclamation was made 1st September, 1906. The name of the territory was changed to the Territory of Papua.

The present government of the Territory is outlined in the Papua Act (No. 9 of 1905) passed by the Commonwealth, vesting the executive power in a lieutenant-governor, assisted by an executive council with advisory functions. The legislative power is vested in a legislative council consisting of the lieutenant-governor, the members of the executive council, and a number of non-official members, not exceeding twelve, appointed by the Governor-General or the lieutenant-governor. All ordinances must be laid before the Commonwealth Parliament.

By Ordinance of 1889 (No. 6 of 1889) the common law of England was introduced²). A number of the Queensland acts have been adopted by local ordinances. Under the Papua Act (No. 9 of 1905) it is provided that the laws in force in British New Guinea at the commencement of the Act, with certain exceptions not necessary to be mentioned here, shall continue in force in the Territory of Papua until amended or repealed. Acts of the Commonwealth Parliament are not in force in Papua unless expressed to extend thereto.

¹) Journal of the Society of Comparative Legislation, N. S. No. 1, p. 71. — ²) "Those portions of the acts, statutes, and laws of England that were in force in the Colony of Queensland on the 17th day of September, 1888, and that can be put in force and become law in the Possession, by being adopted by an ordinance of the Possession, are to the extent that they were on such date in force in the said Colony hereby adopted, as the ordinances and laws of British New Guinea, so far as the same shall be applicable to the circumstances of the Possession. The principles and rules of common law and equity that for the time being shall be in force and prevail in England shall, so far as the same shall be applicable to the circumstances of the Possession, be likewise the principles and rules of common law and equity that shall for the time being be in force and prevail in British New Guinea." — The Courts and Laws adopting Ordinance (amended) of 1889 (No. 6 of 1889), §§ 3, 4.

II. The Dominion of New Zealand.

New Zealand was discovered and partly explored by Tasman in 1642. Captain Cook landed at Poverty Bay in 1769 and again visited the islands in 1773 to 1774 and in 1777. The colonization of New Zealand began in 1814 by the establishment of a mission by Samuel Marsden. Other missions were established in 1822 and 1838. In 1839 the New Zealand Chartered Company received a concession from the British Government and founded Wellington. In 1840 Auckland was founded by Governor Hobson, and by the Treaty of Waitangi, concluded the same year (5th February), the native chiefs recognized the sovereignty of the British Crown. New Plymouth and Nelson were founded in 1841, Otago in 1848, and Canterbury in 1850. By Letters Patent of 16th November, 1841, the islands were erected into a colony separate from New South Wales. By an Act of the Imperial Parliament (15 & 16 Vic. c. 72) passed in 1852 responsible government was granted to the Colony. By Proclamation of 9th September, 1907, the title of "The Dominion of New Zealand" was conferred on the Colony.

The present constitution is founded on the Act of 1852, above mentioned, as amended by subsequent colonial legislation. The executive power is vested in the Governor, assisted by an Executive Council. The General Assembly consists of a Legislative Council and a House of Representatives.

By Act 21 & 22 Vic. No. 2 the law of England as it existed on 14th January, 1840, so far as applicable to the circumstances of the Colony, was declared to be in force in New Zealand.

The sources of law in New Zealand are the following:

1. Acts of the Imperial Parliament expressly or impliedly made applicable to all colonies or to New Zealand.
2. Statutory orders and regulations made by the Crown under a power conferred by an Act of the Imperial Parliament.
3. Prerogative orders, charters, and letters patent issued by the Crown.
4. Acts of the Parliament of New Zealand.
5. Orders, rules, and regulations made under power conferred by an Act of the Parliament of New Zealand.
6. The law of England, both statutory and common law, as it existed on 14th January, 1840, so far as applicable.

Chronological Tables of Legislation.¹⁾

I. Commonwealth of Australia.

1. Commonwealth.

1901—1910.

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
No. 14 of 1903	1903	Sea-carriage of goods	Am. by Nos. 5 of 1908, 27 of 1909, and 29 of 1910.
No. 10 of 1905	1905	Secret commissions	
No. 16 of 1905	1905	Commerce (trade descriptions)	
No. 9 of 1906	1906	Australian industries preservation	
No. 5 of 1908	1908	Australian industries preservation	
No. 11 of 1909	1909	Marine insurance	
No. 26 of 1909	1909	Australian industries preservation	
No. 27 of 1909	1909	Bills of exchange	
No. 29 of 1910	1910	Australian industries preservation	

¹⁾ Only the statutes dealing immediately with substantive commercial law are enumerated.

— Abbreviations: Am. = amended or affected; cons. = consolidated; rep. = repealed.

2. States.

a) New South Wales.¹⁾

1824—1910.

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
5 Geo. IV. No. 1	1824	Notes and bills	Rep. by 7 Geo. IV. No. 3.
7 Geo. IV. No. 4	1826	Bills of exchange	Rep. by 51 Vic. No. 2.
11 Geo. IV. No. 7	1830	Insolvency	Rep. by No. 28 of 1898.
5 Wm. IV. No. 4	1834	Insolvency	Rep. by No. 28 of 1898.
5 Wm. IV. No. 10	1834	Usury	Rep. by No. 43 of 1902.
2 Vic. No. 14	1838	Insolvency	Rep. by 5 Vic. No. 17.
3 Vic. No. 21	1839	Companies	Rep. by No. 40 of 1899.
4 Vic. No. 24	1840	Insolvency	Rep. by 5 Vic. No. 17.
5 Vic. No. 17	1841	Insolvency	Rep. by 51 Vic. No. 19.
6 Vic. No. 2	1842	Companies	Rep. by No. 40 of 1899.
7 Vic. No. 19	1843	Insolvency	Rep. by 51 Vic. No. 19, and No. 25 of 1898.
8 Vic. No. 6	1844	Insolvency	Rep. by 51 Vic. No. 19.
8 Vic. No. 15	1844	Insolvency	Rep. by 51 Vic. No. 19.
10 Vic. No. 14	1846	Insolvency	Rep. by 51 Vic. No. 19, and No. 25 of 1898.
11 Vic. No. 19	1847	Companies	Rep. by 37 Vic. No. 19.
11 Vic. No. 56	1848	Companies	Rep. by No. 40 of 1899.
17 Vic. No. 9	1853	Partnership	Rep. by 37 Vic. No. 19, and 46 Vic. No. 17.
17 Vic. No. 32	1853	Insolvency	Rep. by 51 Vic. No. 19.
19 Vic. No. 33	1855	Insolvency	Rep. by 51 Vic. No. 19.
20 Vic. No. 7	1857	Drafts on bankers	Rep. by 51 Vic. No. 2.
20 Vic. No. 13	1857	Bills of lading	Rep. by No. 43 of 1902.
20 Vic. No. 24	1857	Insolvency	Rep. by 51 Vic. No. 19.
20 Vic. No. 30	1857	Bills of exchange	Rep. by No. 42 of 1901.
22 Vic. No. 3	1858	Negotiable instruments	Rep. by No. 42 of 1901.
24 Vic. No. 20	1861	Insolvency	Rep. by 51 Vic. No. 19.
25 Vic. No. 8	1861	Insolvency	Rep. by 51 Vic. No. 19.
27 Vic. No. 4	1863	Insolvency	Rep. by No. 28 of 1898.
30 Vic. No. 13	1866	Factors	Rep. by No. 28 of 1899.
30 Vic. No. 14	1866	Partnership	Rep. by 55 Vic. No. 12.
31 Vic. No. 9	1867	Insolvency	Rep. by 51 Vic. No. 19.
36 Vic. No. 16	1873	Insolvency	Rep. by No. 28 of 1898.
37 Vic. No. 19	1874	Companies	Rep. by No. 40 of 1899.
38 Vic. No. 1	1874	Bankruptcy	Rep. by 51 Vic. No. 19, and No. 25 of 1898.
39 Vic. No. 2	1875	Bank holidays	Rep. by No. 9 of 1898.
44 Vic. No. 23	1881	No-liability companies	Rep. by 60 Vic. No. 15.
48 Vic. No. 14	1884	Extra-colonial registers	Rep. by No. 40 of 1899.
51 Vic. No. 2	1887	Bills of exchange	Superseded by Commonwealth Act.
51 Vic. No. 19	1887	Bankruptcy	Rep. by No. 11 of 1898, No. 25 of 1898, and No. 35 of 1900.
52 Vic. No. 11	1888	Bankruptcy	Rep. by No. 25 of 1898.
52 Vic. No. 14	1888	Companies	Rep. by No. 11 of 1898, and No. 40 of 1899.
55 Vic. No. 9	1892	Companies	Rep. by No. 40 of 1899.
57 Vic. No. 25	1894	Companies	Rep. by No. 40 of 1899.
60 Vic. No. 15	1896	Companies	Rep. by No. 40 of 1899.
60 Vic. No. 29	1896	Bankruptcy	Rep. by No. 10 of 1898, and No. 25 of 1898.
1898, No. 9	1898	Banks (holidays)	Am. by No. 30 of 1899, No. 80 of 1900, and No. 15 of 1906.
1898, No. 25	1898	Bankruptcy	
1899, No. 30	1899	Banks (holidays)	
1899, No. 40	1899	Companies	Am. by No. 47 of 1900, No. 22 of 1906, and No. 9 of 1907.
1900, No. 47	1900	Companies	

¹⁾ Based on the Historical Table prepared by H. M. Cockshott, and contained in the Statutes of New South Wales (of practical utility).

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
1900, No. 80	1900	Banks' half holiday	Am. by No. 9 of 1907.
1902, No. 43	1902	Usury	
1902, No. 100	1902	Registration of firms	
1906, No. 15	1906	Bank holidays	
1906, No. 22	1906	Companies	
1907, No. 9	1907	Companies	

b) Victoria.¹⁾
1851—1911.

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
17 Vic. No. 5	1853	Partnership	Rep. by No. 190.
18 Vic. No. 11	1854	Insolvency	Rep. by No. 273.
18 Vic. No. 20	1855	Companies	Rep. by No. 204.
18 Vic. No. 24	1855	Instruments	Rep. by No. 5.
19 Vic. No. 2	1856	Instruments	Rep. by No. 204.
No. 5	1857	Bills of lading	Rep. by No. 204.
No. 173	1863	Insolvency	Rep. by No. 273.
No. 179	1863	Partnership	Rep. by No. 1122.
No. 182	1863	Mercantile law	Rep. by Nos. 204, 255, and 274.
No. 190	1864	Trading companies	Rep. by No. 1074.
No. 204	1864	Instruments	Rep. by Nos. 233, 283, 313, 458, 557, 562, 772, 904, and 1103.
No. 379	1870	Insolvency	Rep. by Nos. 411, 565, 710, 827, and 1102.
No. 409	1871	Companies	Rep. by Nos. 881, and 1074.
No. 411	1871	Insolvency	Rep. by No. 1102.
No. 458	1873	Instruments and bank holidays	Rep. by No. 1164.
No. 522	1876	Bills of exchange	Rep. by Nos. 562, and 772.
No. 561	1876	Stoppage in transitu	Rep. by No. 1103.
No. 562	1876	Crossed cheques	Rep. by No. 772.
No. 605	1878	Instruments	Rep. by No. 772.
No. 722	1881	Companies	Rep. by No. 1074.
No. 772	1883	Bills of exchange	Rep. by Nos. 1058, and 1103.
No. 804	1884	Companies	Rep. by No. 1074.
No. 851	1885	Companies (wages)	Rep. by No. 1074.
No. 863	1885	Bills of lading	Rep. by No. 1103.
No. 972	1888	Instruments	Rep. by No. 1103.
No. 991	1888	Companies	Rep. by No. 1074.
No. 1002	1888	Banks and currency	Rep. by No. 1164.
No. 1074	1890	Companies	Am. by Nos. 1269, 1291, 1442, 1482, 1497, 1541, 1699, 2039. In part rep. by No. 2293.
No. 1102	1890	Insolvency	Am. by Nos. 1513, and 1544.
No. 1103	1890	Instruments	Am. by Nos. 1223, 1348, 1422, 1423, 1785, and 1925. In part superseded by Commonwealth Act.
No. 1122	1890	Partnership	Rep. by Nos. 1222 and 2319.
No. 1164	1890	Banks and currency	Am. by No. 1534.
No. 1220	1891	Companies (liquidation)	Rep. by No. 1269.
No. 1222	1891	Partnership	
No. 1269	1892	Companies	Rep. by No. 2293.
No. 1380	1895	Companies (documents)	Rep. by No. 2293.
No. 1422	1896	Sale of goods	
No. 1423	1896	Instruments	
No. 1442	1896	Companies	Rep. by No. 2293.
No. 1482	1896	Companies	Rep. by No. 2293.
No. 1488	1897	Companies	Rep. by No. 2293.
No. 1502	1897	Companies	Rep. by No. 2293.
No. 1512	1897	Instruments	
No. 1513	1897	Insolvency	Am. by No. 1544.

¹⁾ Based on the Historical Table contained in Horwitz's Statutes of Victoria.

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
No. 1534	1897	Banks and currency	Am. by No. 2319.
No. 1541	1897	Defunct companies	Rep. by No. 2293.
No. 1544	1898	Insolvency	
No. 1645	1899	Companies (rules and orders)	Rep. by No. 2293.
No. 1785	1902	Instruments	
No. 1886	1903	Companies	Rep. by No. 2293.
No. 1925	1904	Instruments	
No. 1974	1905	Secret commissions	
No. 2039	1906	Companies	Rep. by No. 2293.
No. 2073	1906	Companies (auditors)	Rep. by No. 2079.
No. 2079	1907	Companies (auditors)	Rep. by No. 2293.
No. 2156	1908	Companies (names)	
No. 2203	1909	Companies (names)	Rep. by No. 2293.
No. 2293	1910	Companies	
No. 2319	1911	Bank holidays	

c) Tasmania.¹⁾
1826—1910.

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
11 Geo. IV. No. 4	1830	Insolvent debtors	Exhausted.
11 Geo. IV. No. 6	1830	Usury	Exhausted.
4 Wm. IV. No. 17	1833	Debtors' relief	Exhausted.
5 Wm. IV. No. 12	1834	Debtors' relief	Exhausted.
5 Vic. No. 17	1841	Copartnership	Am. by 7 Vic. No. 16, 29 Vic. No. 13, and 44 Vic. No. 1 Partly rep. by 33 Vic. No. 22.
7 Vic. No. 16	1843	Copartnership	Rep. by 33 Vic. No. 22.
20 Vic. No. 17	1856	Drafts on bankers	Rep. by 38 Vic. No. 9.
20 Vic. No. 25	1856	Bills of lading	
22 Vic. No. 3	1858	Trade and commerce	Am. by 48 Vic. No. 14, and 55 Vic. No. 3.
23 Vic. No. 12	1859	Companies	Rep. by 33 Vic. No. 22.
23 Vic. No. 25	1859	Insolvency	Rep. by 34 Vic. No. 33.
32 Vic. No. 13	1868	Factors	Rep. by 55 Vic. No. 4.
33 Vic. No. 22	1869	Companies	Am. by 47 Vic. No. 8, 59 Vic. No. 19, 60 Vic. No. 3.
34 Vic. No. 32	1870	Bankruptcy	
44 Vic. No. 3	1880	Companies (proxies)	
47 Vic. No. 8	1883	Companies	Rep. by 59 Vic. No. 19.
48 Vic. No. 9	1884	Bank holidays	Rep. by 3 Edw. VII. No. 4.
48 Vic. No. 14	1884	Bills of exchange	Superseded.
55 Vic. No. 3	1891	Partnership	
55 Vic. No. 4	1891	Factors	
55 Vic. No. 6	1891	Directors' liability	Rep. by 59 Vic. No. 19.
55 Vic. No. 8	1891	Companies	Rep. by 59 Vic. No. 19.
56 Vic. No. 23	1892	Companies	Rep. by 59 Vic. No. 19.
57 Vic. No. 19	1893	Companies	Rep. by 59 Vic. No. 19.
59 Vic. No. 17	1895	Foreign companies	Am. by 62 Vic. No. 26, 1 Edw. VII. No. 47, 2 Edw. VII. No. 35, 5 Edw. VII. No. 35, and 7 Edw. VII. No. 25.
59 Vic. No. 19	1895	Companies	
60 Vic. No. 3	1896	Companies	Am. by 6 Edw. VII. No. 25.
60 Vic. No. 14	1896	Sale of goods	
62 Vic. No. 26	1898	Foreign companies	
63 Vic. No. 12	1899	Bankruptcy	
63 Vic. No. 34	1899	Registration of firms	
1 Edw. VII. No. 47	1901	Foreign companies	Am. by 2 Edw. VII. No. 35, and 7 Edw. VII. No. 25.
2 Edw. VII. No. 35	1902	Foreign companies	

¹⁾ Based on the Historical Table contained in Stops' Tasmanian Statutes.

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
3 Edw. VII. No. 4	1903	Bank holidays	Am. by 1 Geo. V. No. 35. Superseded by Commonwealth Act.
5 Edw. VII. No. 7	1905	Bills of exchange	
5 Edw. VII. No. 35	1905	Foreign companies	
6 Edw. VII. No. 21	1906	Secret commissions	Exhausted.
6 Edw. VII. No. 25	1906	Companies	
6 Edw. VII. No. 29	1906	Bills of exchange	
7 Edw. VII. No. 25	1907	Foreign companies	Superseded by Commonwealth Act.
8 Edw. VII. No. 6	1908	Limited partnership	
9 Edw. VII. No. 31	1909	Bills of exchange	
1 Geo. V. No. 35	1910	Bank holidays	

d) South Australia.¹⁾
1836—1910.

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
No. 1 of 1841	1841	Insolvency	Rep. by No. 14 of 1857/58.
No. 5 of 1844	1844	Insolvency	Rep. by No. 14 of 1857/58.
No. 1 of 1845	1845	Insolvency	Rep. by No. 14 of 1857/58.
No. 5 of 1847	1847	Companies	Rep. by No. 13 of 1864.
No. 5 of 1854	1854	Companies	Rep. by No. 13 of 1864.
No. 11 of 1855/56	1855	Insolvency	Rep. by No. 385 of 1886.
No. 25 of 1855/56	1855	Companies	Rep. by No. 13 of 1864.
No. 5 of 1856	1856	Companies	Rep. by No. 13 of 1864.
No. 14 of 1857/58	1857	Insolvency	Rep. by No. 16 of 1860.
No. 11 of 1858	1858	Insolvency	Rep. by No. 16 of 1860.
No. 21 of 1859	1859	Insolvency	Rep. by No. 16 of 1860.
No. 25 of 1859	1859	Bills of lading	
No. 16 of 1860	1860	Insolvency	Rep. by No. 385 of 1886.
No. 3 of 1861	1861	Mercantile law	Am. by No. 100 of 1878.
No. 13 of 1864	1864	Companies	Rep. by No. 557 of 1892.
No. 13 of 1867	1867	Insolvency	Rep. by No. 385 of 1886.
No. 3 of 1870/71	1870	Insolvency	Rep. by No. 385 of 1886.
No. 22 of 1870/71	1870	Companies	Rep. by No. 557 of 1892.
No. 19 of 1873	1873	Bank holidays	Am. by No. 251 of 1882, and No. 571 of 1893.
No. 44 of 1876	1876	Insolvency	Rep. by No. 385 of 1886
No. 54 of 1876	1876	Insolvency	Rep. by No. 385 of 1886.
No. 93 of 1878	1878	Companies	Rep. by No. 557 of 1892.
No. 100 of 1878	1878	Mercantile law	Rep. by No. 312 of 1884.
No. 185 of 1880	1880	Insolvency	Rep. by No. 232 of 1881.
No. 232 of 1881	1881	Insolvency	Rep. by No. 385 of 1886.
No. 251 of 1882	1882	Bank holidays	Am. by No. 571 of 1893.
No. 276 of 1882	1882	Insolvency	Rep. by No. 385 of 1886.
No. 289 of 1883/84	1883	Companies	Rep. by No. 557 of 1892.
No. 312 of 1884	1884	Bills of exchange	Am. by No. 867 of 1904.
No. 326 of 1884	1884	Insolvency	Rep. by No. 385 of 1886.
No. 375 of 1886	1886	Companies	Rep. by No. 557 of 1892.
No. 385 of 1886	1886	Insolvency	Am. by No. 404 of 1887, and No. 655 of 1896.
No. 404 of 1887	1887	Insolvency	Am. by No. 655 of 1896.
No. 408 of 1887	1887	Companies	Rep. by No. 557 of 1892.
No. 557 of 1892	1892	Companies	Am. by No. 576 of 1893, and No. 914 of 1906.
No. 571 of 1893	1893	Bank holidays	Rep. by No. 1010 of 1910.
No. 576 of 1893	1893	Companies	Am. by No. 914 of 1906.
No. 630 of 1895	1895	Sale of goods	
No. 655 of 1896	1896	Insolvency	
No. 723 of 1899	1899	Registration of firms	
No. 867 of 1904	1904	Bills of exchange	Superseded by Commonwealth Act.
No. 914 of 1906	1906	Companies	
No. 1006 of 1910	1910	Secret commissions	
No. 1010 of 1910	1910	Bank holidays	

¹⁾ Based on Castle and Thomas' Index.

e) Queensland.¹⁾**1860—1910.**

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
25 Vic. No. 4	1861	Cheques	Rep. by 29 Vic. No. 14, and 31 Vic. No. 39.
27 Vic. No. 4	1863	Companies	Am. by 36 Vic. No. 22, 38 Vic. No. 5, 39 Vic. No. 9, 40 Vic. No. 6, 50 Vic. No. 19, 50 Vic. No. 29, 50 Vic. No. 31, 50 Vic. No. 34, 53 Vic. No. 18, 56 Vic. No. 24, 57 Vic. No. 3, 60 Vic. No. 21.
28 Vic. No. 6	1864	Mercantile	Rep. by 31 Vic. No. 39.
28 Vic. No. 25	1864	Insolvency	Rep. by 38 Vic. No. 5.
31 Vic. No. 1	1867	Foreign companies	Rep. by 50 Vic. No. 31.
31 Vic. No. 15	1868	Bills of exchange	Rep. by 41 Vic. No. 13, and 48 Vic. No. 10.
31 Vic. No. 39	1867	Mercantile	Am. by 38 Vic. No. 5, 55 Vic. No. 27, 56 Vic. No. 8, and 60 Vic. No. 10.
34 Vic. No. 12	1870	Mercantile	
38 Vic. No. 5	1874	Insolvency	Am. by 40 Vic. No. 12.
40 Vic. No. 12	1876	Insolvency	
41 Vic. No. 13	1877	Bank holidays	Rep. by 4 Edw. VII. No. 8.
43 Vic. No. 10	1879	Bills of exchange	Rep. by 48 Vic. No. 10.
48 Vic. No. 10	1884	Bills of exchange	Superseded by Commonwealth Act.
50 Vic. No. 31	1886	British companies	
53 Vic. No. 18	1889	Companies	Am. by 56 Vic. No. 24, 57 Vic. No. 3, 60 Vic. No. 21.
55 Vic. No. 7	1891	Partnerships	
55 Vic. No. 10	1891	Companies	
55 Vic. No. 27	1891	Mercantile	Rep.
56 Vic. No. 8	1892	Factors	
56 Vic. No. 24	1892	Companies	Am. by 57 Vic. No. 3, and 60 Vic. No. 21.
57 Vic. No. 3	1893	Companies	Am. by 60 Vic. No. 21.
57 Vic. No. 15	1893	Insolvency	
58 Vic. No. 19	1894	Reconstructed companies	
59 Vic. No. 2	1895	Foreign companies	
60 Vic. No. 6	1896	Sale of goods	
60 Vic. No. 10	1896	Mercantile	
60 Vic. No. 21	1896	Companies	
4 Edw. VII. No. 8	1904	Bank holidays	Am. by 6 Edw. VII. No. 12.
5 Edw. VII. No. 7	1905	Bills of exchange	Superseded by Commonwealth Act.
6 Edw. VII. No. 12.	1906	Bank holidays	
9 Edw. VII. No. 13	1909	Companies	

f) Western Australia.²⁾**1831—1911.**

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
6 Wm. IV. No. 4	1836	Adopting 2 & 3 Wm. IV. c. 98	
8 Wm. IV. No. 1	1837	Banking companies	Am. by 2 Vic. No. 9.
2 Vic. No. 9	1839	Banking companies	Rep. by 4 Vic. No. 5.
4 Vic. No. 5	1840	Note issues	
6 Vic. No. 11	1842	Insolvent debtors	Rep. by 20 Vic. No. 10.
7 Vic. No. 6	1843	Insolvent debtors	Rep. by 20 Vic. No. 10.
7 Vic. No. 13	1844	Adopting 6 & 7 Wm. IV. c. 58 and 5 & 6 Vic. c. 39	Am. by 42 Vic. No. 3.

¹⁾ Based on the Historical Tables contained in Pain and Woolcock's Queensland Statutes.— ²⁾ Based on James' Historical Tables.

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
20 Vic. No. 7	1856	Adopting 18 & 19 Vic. c. 111	
20 Vic. No. 10	1856	Insolvency	Rep. by 34 Vic. No. 20.
22 Vic. No. 6	1858	Companies	Rep. by 56 Vic. No. 8.
27 Vic. No. 20	1863	Insolvency	Rep. by 34 Vic. No. 20.
28 Vic. No. 5	1864	Insolvency	Rep. by 34 Vic. No. 20.
30 Vic. No. 1	1866	Usury	
31 Vic. No. 8	1867	Adopting 19 & 20 Vic. c. 97	Am. by 59 Vic. No. 23, and 59 Vic. No. 41.
34 Vic. No. 20	1871	Bankruptcy	Rep. by 55 Vic. No. 32.
42 Vic. No. 3	1878	Factors	
43 Vic. No. 8	1879	Bills of exchange	Rep. by 48 Vic. No. 10.
48 Vic. No. 9	1884	Bank holidays	Am. by 52 Vic. No. 3, and 63 Vic. No. 40.
48 Vic. No. 10	1884	Bills of exchange	Superseded by Commonwealth Act.
48 Vic. No. 19	1884	Companies	Rep. by 56 Vic. No. 8.
51 Vic. No. 12	1887	Companies (fees)	Inoperative
52 Vic. No. 3	1888	Bank holidays	
55 Vic. No. 32	1892	Bankruptcy	Am. by 62 Vic. No. 15.
56 Vic. No. 8	1893	Companies	Am. by 60 Vic. No. 2, 61 Vic. No. 35, and 2 Edw. VII. No. 19.
59 Vic. No. 23	1895	Partnership	
59 Vic. No. 41	1895	Sale of goods	
60 Vic. No. 2	1896	Companies	Am. by 61 Vic. No. 35.
61 Vic. No. 14	1897	Registration of firms	
61 Vic. No. 35	1897	Companies	Am. by 62 Vic. No. 28, and 63 Vic. No. 54.
62 Vic. No. 15	1898	Bankruptcy	
62 Vic. No. 28	1898	Companies	Am. by 63 Vic. No. 54.
63 Vic. No. 40	1899	Bank holidays	
63 Vic. No. 54	1899	Companies	
2 Edw. VII. No. 19	1902	Companies	
4 Edw. VII. No. 54	1904	Bills of exchange	Superseded by Commonwealth Act
5 Edw. VII. No. 13	1905	Secret commissions	
7 Edw. VII. No. 33	1907	Marine insurance	
8 Edw. VII. No. 30	1908	Limited partnership	
9 Edw. VII. No. 26	1909	Sea carriage of goods	

II. Dominion of New Zealand.¹⁾

1841—1910.

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
13 of 1858	1858	Special partnerships	Rep. by No. 12 of 1880.
62 of 1858	1858	Bankers' drafts	Rep. by No. 22 of 1880.
8 of 1860	1860	Mercantile law	Rep. by No. 12 of 1880.
13 of 1860	1860	Joint stock companies	Rep. by No. 35 of 1882.
3 of 1861	1861	Advances to agents	Rep. by No. 12 of 1880.
2 of 1862	1862	Joint stock companies	Rep. by No. 35 of 1882.
9 of 1865	1865	British companies	Rep. by No. 35 of 1882.
2 of 1866	1866	Partnerships	Rep. by No. 12 of 1880.
49 of 1866	1866	Carriers	Rep. by No. 12 of 1880.
18 of 1867	1867	Bankruptcy	Rep. by No. 79 of 1875.
27 of 1868	1868	Companies	Rep. by No. 35 of 1882.
47 of 1868	1868	Bankruptcy	Rep. by No. 79 of 1875.
4 of 1869	1869	Marine re-assurance	Rep. by No. 12 of 1880.
35 of 1869	1869	Delivery of goods, freight liens	Rep. by No. 12 of 1880.
38 of 1869	1869	Joint stock companies	Rep. by No. 35 of 1882.
23 of 1870	1870	Bankruptcy	Rep. by No. 79 of 1875.
26 of 1870	1870	Companies (winding-up)	Rep. by No. 33 of 1872.
38 of 1871	1871	Companies (winding-up)	Rep. by No. 33 of 1872.
34 of 1872	1872	Companies (dissolution)	Rep. by No. 35 of 1882.

¹⁾ Based on the list contained in Curnin's Index to the Laws of New Zealand (15th ed.).

No. of Act.	Date.	Subject.	How affected by subsequent legislation.
6 of 1873	1873	Bank holidays	Rep. by No. 22 of 1880.
7 of 1873	1873	Joint-stock companies	Rep. by No. 35 of 1882.
13 of 1874	1874	Bankruptcy	Rep. by No. 79 of 1875.
4 of 1878	1878	Mercantile law	Rep. by No. 12 of 1880.
25 of 1878	1878	Bank holidays	Rep. by No. 22 of 1880.
12 of 1880	1880	Mercantile law	Rep. and cons. 1908.
22 of 1880	1880	Banks and bankers (holidays)	Rep. and cons. 1908.
30 of 1880	1880	Joint-stock companies	Rep. by No. 35 of 1882.
35 of 1882	1882	Companies	Rep. by No. 53 of 1903.
68 of 1882	1882	Banks and bankers	Rep. and cons. 1908.
8 of 1883	1883	Bills of exchange	Rep. and cons. 1908.
10 of 1883	1883	Bankruptcy	Rep. by No. 24 of 1892.
17 of 1883	1883	Companies	Rep. by No. 53 of 1903.
27 of 1884	1884	Foreign companies	Rep. by No. 53 of 1903.
28 of 1884	1884	Bills of exchange	Rep. and cons. 1908.
29 of 1884	1884	Bankruptcy	Rep. by No. 24 of 1892.
4 of 1885	1885	Mercantile law	Rep. by No. 6 of 1891.
22 of 1885	1885	Bankruptcy	Rep. by No. 24 of 1892.
29 of 1886	1886	Companies	Rep. by No. 53 of 1903.
5 of 1887	1887	Banks and bankers	Rep. and cons. 1908.
11 of 1889	1889	Mercantile law	Rep. and cons. 1908.
11 of 1890	1890	Mercantile agents	Rep. and cons. 1908.
14 of 1890	1890	Companies	Rep. by No. 53 of 1903.
4 of 1891	1891	Companies	Rep. by No. 53 of 1903.
6 of 1891	1891	Partnership	Rep. and cons. 1908.
24 of 1892	1892	Bankruptcy	Rep. and cons. 1908.
4 of 1893	1893	Companies	Rep. by No. 53 of 1903.
15 of 1893	1893	Banks and bankers	Rep. and cons. 1908.
53 of 1893	1893	Companies	Rep. by No. 53 of 1903.
15 of 1894	1894	Companies	Rep. by No. 53 of 1903.
64 of 1894	1894	Banking	Rep. and cons. 1908.
23 of 1895	1895	Sale of goods	Rep. and cons. 1908.
40 of 1900	1900	Companies	Rep. by No. 53 of 1903.
58 of 1901	1901	Companies	Rep. by No. 53 of 1903, and No. 39 of 1904.
38 of 1902	1902	Bank holidays	Rep. and cons. 1908.
51 of 1902	1902	Companies	Rep. by No. 53 of 1903, and No. 39 of 1904.
53 of 1903	1903	Companies	Rep. and cons. 1908.
39 of 1904	1904	Companies	Rep. and cons. 1908.
40 of 1905	1905	Bills of exchange	Rep. and cons. 1908.
24 of 1907	1907	Marine insurance	Rep. and cons. 1908.
11 of 1908	1908	Banking (holidays)	Am. by No. 71 of 1910.
12 of 1908	1908	Bankruptcy	
15 of 1908	1908	Bills of exchange	
26 of 1908	1908	Companies	
112 of 1908	1908	Marine insurance	
117 of 1908	1908	Mercantile law	
139 of 1908	1908	Partnerships	
168 of 1908	1908	Sale of goods	
178 of 1908	1908	Shipping and seamen	Am. by No. 36 of 1909.
36 of 1909	1909	Shipping and seamen	
26 of 1910	1910	Companies	
32 of 1910	1910	Commercial trusts	
40 of 1910	1910	Secret commissions	
71 of 1910	1910	Public holidays	

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¹⁾ The Acts of the old Federal Council of Australasia (enacted by virtue of 48 & 49 Vic. c. 60), except 1888, may be found appended to the Queensland Sessional Laws of 1886, 1889, 1890, 1893, and 1897. The Act of 1888 is appended to Pain & Woolcock's Queensland Statutes, Vol. 2.

²⁾ Unofficial collections of the statutes in force have been made by the Government Printer from time to time. There has been no official revision or consolidation.

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1. Commonwealth.

A. Reports.

Name.	No. of vol-umes.	Period.	Method of citation.
*Commonwealth Law Reports	10	1903—1910	C. L. R.
Hunter's Cases upon Torrens Land Act	1	Up to 1894	Hunter.
*Commonwealth Conciliation and Arbitration Reports	2	1905—1908	C. A. R.

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2. States.

a) New South Wales.

A. Reports.

Name.	No. of vol-umes.	Period.	Method of citation.
Reserved and Equity Judgments	1	1845	Res. Judg. (N. S. W.)
Legge's Reports	2	1825—1862	Legge.
Supreme Court Reports	14	1862—1876	S. C. R. (N. S. W.)
Knox's Reports	1	1877	Knox.

¹⁾ The statutes were consolidated in 1908 and the revised acts are published as an appendix to the session acts of 1908. — ²⁾ See also the periodicals given below sub C. For reports of cases appealed to the Privy Council see volumes of Privy Council reports. Only the latest digests are given. An asterisk denotes that the series is a current one.

Name.	No. of vol-umes.	Period.	Method of citation.
Supreme Court Reports, New Series	2	1878—1879	S. C. R. (N. S. W.) (N. S.)
Tarleton's Term Reports	1	1881—1883	Tarleton.
N. S. W. Law Reports	21	1880—1900	L. R. (N. S. W.)
*State Reports	10	1901—1910	S. R. (N. S. W.)
N. S. W. Bankruptcy Cases	9	1890—1899	B. C. (N. S. W.)
*N. S. W. Weekly Notes	27	1885—1910	W. N. (N. S. W.)
Crown Land Cases	1	1847—1879	C. L. Cas.
*Land Appeal Court Cases	20	1890—1910	Land App. (N. S. W.)
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*b) Victoria.***A. Reports.**

Name.	No. of vol-umes.	Period.	Method of citation.
Williams' Practice Cases in the Supreme Court for the District of Port Phillip	1	1846	Williams Pr. Cas.
A'Beckett's Reserved Judgments	6	1846—1851	a'Beckett.
Victorian State Trials	1	1855	V. St. Tr.
Victoria Law Times	2	1856—1857	V. L. T.
Wyatt and Webb Reports	2	1861—1863	W. & W.
Wyatt, Webb and a'Beckett	6	1863—1869	W. W. & a'B.
Victorian Reports	3	1870—1872	V. R.
Australian Jurist	5	1870—1874	A. J. R.
*Victorian Law Reports	35	1875—1910	V. L. R.
*Australian Law Times	32	1879—1910	A. L. T.
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*c) Tasmania.***A. Reports.**

Name.	No. of vol-umes.	Period.	Method of citation.
Nicholls and Stops' Reports	2	1897—1904	N. & S.
*Tasmanian Law Reports	7	1905—1911	Tas. L. R.

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¹⁾ Digests cases reported in the newspapers during this period.

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Name.	No. of vol-umes.	Period.	Method of citation.
Pelham's Reports	1	1865—1866	Pelham.
S. A. Law Reports	25	1868—1895	S. A. L. R.
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*State Reports	9	1902—1910	S. R. (Q.)
*Crown Land Law Reports	4	1860—1910	C. L. L.
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*f) Western Australia.***Reports.**

Name.	No. of vol-umes.	Period.	Method of citation.
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*Conciliation and Arbitration Reports	9	1901—1910	C. & A. R.

II. Dominion of New Zealand.**A. Reports.**

Name.	No. of vol-umes.	Period.	Method of citation.
Macassey's Reports	1	1861—1872	Mac.
Fenton's Important Judgments	1	1866—1879	Fenton.
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Ollivier, Bell, and Fitzgerald's Reports	1	1878—1880	O. B. & F.
Colonial Law Journal	1	1874—1875	C. L. J.
*New Zealand Law Reports	29	1883—1910	L. R. (N. Z.)
*New Zealand Gazette Law Reports	12	1898—1910	Gaz. L. R.
*Decisions under Workmen's Compensation Acts	7	1901—1908	
	9	1901—1910	W. C. A.
*Industrial Arbitration Reports	4	1894—1906	I. A. R.
*District and Magistrates' Courts Reports	5	1900—1910	D. C. R.

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Organization of the Judiciary. Jurisdiction. Procedure.

I. The Commonwealth of Australia.

The judicial system of the Commonwealth comprises two sets of courts. At present the Commonwealth judiciary consists of the High Court, which is both a court of federal jurisdiction and a general court of appeals from the tribunals of the States. The several States retain control of their own courts substantially as they existed prior to federation.

1. Commonwealth.

The Constitution Act provides that "the judicial power of the Commonwealth shall be vested in a Federal Supreme Court to be called the High Court of Australia, and in such other Federal Courts as the Parliament creates and in such other courts as it invests with federal jurisdiction. The High Court shall consist of a Chief Justice and so many other Justices, not less than two, as the Parliament prescribes"¹). The number of justices was originally fixed at the minimum prescribed by the Constitution²), but has now been increased to four³).

The High Court has both original and appellate jurisdiction. The Constitution⁴) confers original jurisdiction "in all matters: a) Arising under any treaty; b) Affecting consuls or other representatives of other countries; c) In which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth is a party; d) Between States, or between residents of different States, or between a State and a resident of another State; e) In which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth". In these cases the jurisdiction is exclusive⁵). "The Parliament may make laws conferring original jurisdiction on the High Court in any matter: a) Arising under this Constitution, or involving its interpretation; b) Arising under any laws made by the Parliament; c) Of admiralty and maritime jurisdiction; d) Relating to the same subject-matter claimed under the laws of different States"⁶). With respect to any of the matters in respect of which original jurisdiction is conferred on the High Court by the Constitution or may be conferred by Parliament, the Parliament "may make laws: a) Defining the jurisdiction of any Federal Court other than the High Court; b) Defining the extent to which the jurisdiction of any Federal Court shall be exclusive of that which belongs to, or is invested in the courts of the States; c) Investing any court of a State with federal jurisdiction"⁷). The Parliament may also "make laws conferring rights to proceed against the Commonwealth or a State in respect of matters within the limits of the judicial power"⁸).

In the exercise of its powers the Parliament has conferred on the High Court original jurisdiction in all matters arising under the Constitution or involving its interpretation⁹); original jurisdiction to determine controversies arising under them is conferred by certain acts of the Parliament, such as the Customs Act, 1901¹⁰), Excise Act, 1901¹¹), Post and Telegraph Act, 1901¹²), Patents Act, 1903¹³), Trade Marks Act, 1905¹⁴), Australian Industries Preservation Act, 1906¹⁵), and others.

¹) Commonwealth Constitution, § 71. — ²) Judiciary Act, 1903, (No. 6 of 1903) § 4. — ³) Judiciary Act, 1906, (No. 5 of 1906) § 2. — ⁴) Commonwealth Constitution, § 75. — ⁵) The jurisdiction of the High Court shall be exclusive of the jurisdiction of the several Courts of the States in the following matters: a) Matters arising directly under any treaty; b) Suits between States, or between persons suing or being sued on behalf of different States, or between a State and a person suing or being sued on behalf of another State; c) Suits by the Commonwealth, or any person suing on behalf of the Commonwealth, against a State or any person being sued on behalf of a State; d) Suits by a State or any person suing on behalf of a State, against the Commonwealth or any person being sued on behalf of the Commonwealth; e) Matters in which a writ of mandamus or prohibition is sought against an officer of the Commonwealth or a federal Court. — Judiciary Act, 1903, (No. 6 of 1903), § 38. — ⁶) Commonwealth Constitution, § 76. — ⁷) Ibid. § 77. — ⁸) Ibid. § 78. — ⁹) In addition to the matters in which original jurisdiction is conferred on the High Court by the Constitution, the High Court shall have original jurisdiction in all matters arising under the Constitution or involving its interpretation. — Judiciary Act, 1903 (No. 6 of 1903), § 30. — ¹⁰) No. 6 of 1901. — ¹¹) No. 9 of 1901. — ¹²) No. 12 of 1901. — ¹³) No. 21 of 1903. — ¹⁴) No. 20 of 1905. — ¹⁵) No. 9 of 1906. See §§ 10, 11, 13, 21, 22, 26 given infra.

In the exercise of its original jurisdiction the High Court is empowered to render judgment, to enforce the same by execution¹⁾, and to grant complete relief²⁾. It is also empowered to issue the necessary writs³⁾.

The several courts of the States are invested with federal jurisdiction, within the limits of their several jurisdictions, in all matters in which the High Court has original jurisdiction or in which original jurisdiction can be conferred upon it, except in the classes of cases enumerated in § 38 of the Judiciary Act, 1903⁴⁾ and subject to the conditions set forth in the note⁵⁾.

Upon the subject of the appellate jurisdiction of the High Court the Constitution⁶⁾ provides that "the High Court shall have jurisdiction, with such exceptions and subject to such regulations as the Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders, and sentences: a) Of any Justice or Justices exercising the original jurisdiction of the High Court; b) Of any other Federal Court, or court exercising federal jurisdiction, or of the Supreme Court of any State, or of any other court of any State⁷⁾ from which at the establishment of the Commonwealth an appeal lies to the Queen in Council; c) Of the Inter-State Commission, but as to questions of law only. And the judgment of the High Court in all such cases shall be final and conclusive. But no exception or regulation prescribed by the Parliament shall prevent the High Court from hearing and determining any appeal from the Supreme Court of a State in any matter in which at the establishment of the Commonwealth any appeal lies from such Supreme Court to the Queen in Council. Until the Parliament otherwise provides, the conditions of and restrictions on appeals to the Queen in Council from the Supreme Court of the several States shall be applicable to appeals from them to the High Court".

The Judiciary Act, 1903, confers appellate jurisdiction on the High Court in all cases where a judgment has been rendered by a Justice or by any Justices, exercising the original jurisdiction of the High Court, whether in Court or Chambers⁸⁾. But no appeal lies as to costs which are in the discretion of the Court,

1) The High Court in the exercise of its original jurisdiction may make and pronounce all such judgments as are necessary for doing complete justice in any cause or matter pending before it, and may for the execution of any such judgment in any part of the Commonwealth direct the issue of such process, whether in use in the Commonwealth before the commencement of this Act or not, as is permitted or prescribed by this or any Act or by Rules of Court. — Judiciary Act, 1903 (No. 6 of 1903), § 31. — 2) The High Court in the exercise of its original jurisdiction in any cause or matter pending before it, whether originated in the High Court or removed into it from another Court, shall have power to grant, and shall grant, either absolutely or on such terms and conditions as are just, all such remedies whatsoever as any of the parties thereto are entitled to in respect of any legal or equitable claim properly brought forward by them respectively in the cause or matter; so that as far as possible all matters in controversy between the parties regarding the cause of action, or arising out of or connected with the cause of action, may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters may be avoided. — Judiciary Act, 1903 (No. 6 of 1903), § 32. — 3) 1. The High Court may make orders or direct the issue of writs: a) Commanding the performance by any court invested with federal jurisdiction, of any duty relating to the exercise of its federal jurisdiction; or b) Requiring any court to abstain from the exercise of any federal jurisdiction which it does not possess; or c) Commanding the performance of any duty by any person holding office under the Commonwealth; or d) Removing from office any person wrongfully claiming to hold any office under the Commonwealth; or e) Of mandamus; or f) Of habeas corpus. 2. This section shall not be taken to limit by implication the power of the High Court to make any order or direct the issue of any writ. — Judiciary Act, 1903 (No. 6 of 1903), § 33. — 4) See p. 22, Note 5, supra. — 5) a) Every decision of the Supreme Court of a State, or any other court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, shall be final and conclusive except so far as an appeal may be brought to the High Court; b) Wherever an appeal lies from a decision of any Court or judge of a State to the Supreme Court of the State, an appeal from the decision may be brought to the High Court; c) The High Court may grant special leave to appeal to the High Court from any decision of any Court or Judge of a State notwithstanding that the law of the State may prohibit any appeal from such Court or Judge; d) The federal jurisdiction of a Court of summary jurisdiction of a State shall not be judicially exercised except by a Stipendiary or Police or Special Magistrate, or some Magistrate of the State who is specially authorized by the Governor-General to exercise such jurisdiction. — Judiciary Act, 1903 (No. 6 of 1903), § 39 (2). — 6) Commonwealth Constitution, § 73. — 7) These words were added so as to include the Local Court of Appeal of South Australia, a tribunal from which an appeal lies to the Privy Council. — 8) Judiciary Act, 1903 (No. 6 of 1903), § 34.

without leave of the court rendering the decision below¹), nor, without leave of the High Court, in criminal cases²).

The appellate jurisdiction of the High Court with respect to judgments of the State courts from which an appeal lay to the Privy Council extends inter alia to judgments where the amount involved is three hundred pounds, or where the claim, demand, or question is to or respecting property or civil right of the same value, or affects the status of any person under the laws relating to aliens, bankruptcy, or insolvency. An appeal from an interlocutory judgment in the above classes of cases requires the leave of the Supreme Court or of the High Court.

The appellate jurisdiction extends furthermore to all judgments, whether final or interlocutory, civil or criminal, from which the High Court thinks fit to give special leave to appeal, and to judgments of the Supreme Court of a State exercising federal jurisdiction. The special conditions relating to appeals are set forth in the note³). The High Court also has jurisdiction to hear and determine appeals from the judgments and decrees of the Central Court of the Territory of Papua⁴), and certain other appellate jurisdiction⁵).

The Constitution Act restricts the right of appeal to the Privy Council. "No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council. The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave. Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of Her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council. The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure"⁶).

Subject to the restriction laid down in the Constitution, just quoted⁷), the right of appeal from the State courts to the Privy Council is preserved, as before the establishment of the Commonwealth⁸). A table setting forth the conditions of appeal from the State courts to the Privy Council is given *infra*⁹).

1) Ibid. § 27. — 2) Ibid. § 77, subject to certain exceptions. — 3) 1. The appellate jurisdiction of the High Court with respect to judgments of the Supreme Court of a State, or of any other Court of a State from which at the establishment of the Commonwealth an appeal lay to the Queen in Council, shall extend to the following judgments whether given or pronounced in the exercise of federal jurisdiction or otherwise and to no others, namely: a) Every judgment, whether final or interlocutory, which 1) Is given or pronounced for or in respect of any sum or matter at issue amounting to or of the value of three hundred pounds; or 2) Involves directly or indirectly any claim, demand, or question, to or respecting any property or any civil right amounting to or of the value of three hundred pounds; or 3) Affects the status of any person under the laws relating to aliens, marriage, divorce, bankruptcy, or insolvency; but so that an appeal may not be brought from an interlocutory judgment except by leave of the Supreme Court or the High Court: b) Any judgment, whether final or interlocutory, and whether in a civil or criminal matter, with respect to which the High Court thinks fit to give special leave to appeal; c) Any judgment of the Supreme Court of a State given or pronounced in the exercise of federal jurisdiction in a matter pending in the High Court: including respectively every or any such judgment which has been given or made before the commencement of this Act, and as to which: 1) Leave to appeal to the King in Council might at the commencement of this Act be granted by the Court appealed from; or 2) Leave to appeal to the King in Council has before the commencement of this Act been granted by the Court appealed from, and up to the commencement of this Act the conditions of appeal have been complied with within the periods limited; or 3) A petition for special leave to appeal to the King in Council has been lodged and is pending at the commencement of this Act; 2. It shall not be necessary in any case, in order to appeal from a judgment of the Court of a State to the High Court to obtain the leave of the Court appealed from. — Judiciary Act, 1903 (No. 6 of 1906), § 35. — 4) Papua Act, 1905 (No. 9 of 1905), § 43. — 5) Cp. Copyright Act, 1905 (No. 25 of 1905), § 73 (2), Designs Act, 1906 (No. 4 of 1906), § 39 (3). — 6) Commonwealth Constitution, § 74. — 7) And see also Judiciary Act, 1903 (No. 6 of 1903), § 39, reprinted p. 23, Note 5, *supra*. — 8) Cp. Victorian Railway Commissioners v. Brown (1906), A. C. 381; Webb v. Outrim (1907), A. C. 81. — 9) P. 27.

By order of the High Court any cause or part of a cause arising under the Constitution or involving its interpretation which is at any time pending in any court of a State on appeal may at any stage of the proceedings before final judgment be removed into the High Court¹). The proceedings after removal are the same as if the cause had been originally commenced in the High Court, and as if the same proceedings had been taken in the cause in the High Court as had been taken therein in the State court prior to its removal. But subsequent proceedings follow the practice of the High Court²). Where a cause is improperly removed from a State court to the High Court the cause may be dismissed or remitted to the court from which it was removed³).

The practice and procedure of the High Court is regulated by the High Court Procedure Act, 1903⁴), and Rules made by the Justices of the High Court.

2. States.

a) New South Wales.⁵)

The judicial organization consists of a Supreme Court, Circuit Courts, District Courts, Magistrates, Courts and Courts of General and Quarter Sessions. The Supreme Court, composed of a Chief Justice and six Puisne Justices, is a court of record with the common law powers of the King's Bench Division, the equitable powers of the Chancery Division, and the powers of the Probate Division in England. It may act as an appellate tribunal from the decisions of individual Judges. An appeal from the decision of the Supreme Court lies to the High Court (see *supra*) and to the Privy Council (see table *infra*). The Circuit Courts are presided over by Judges of the Supreme Court, and have the general powers of the English courts of Oyer and Terminer and Nisi Prius. The District Courts correspond to the English County Courts, and the Magistrates' Courts to those of England. There are also Local Land Boards, a Land Court of Appeals, and other courts of special jurisdiction. New South Wales is exempted from the provisions of the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vic. c. 27). For the trial of commercial causes New South Wales, in 1903, adopted an act based on the practice in the Commercial Court of England⁶).

¹) Judiciary Act, 1903 (No. 6 of 1903), § 40 (1). — ²) Ibid. § 41. — ³) Ibid. § 42. — ⁴) No. 7 of 1903, as amended by No. 13 of 1903. — ⁵) Burge, Colonial and Foreign Laws, Vol. I. pp. 289—293. — ⁶) The Commercial Causes Act, 1903, (No. 19 of 1903) contains the following provisions: **1.** This Act may be cited as the *Commercial Causes Act, 1903*. — **2.** In this Act, unless the context otherwise requires: "Judge" means a Judge of the Supreme Court. "Prescribed" means prescribed by rules of Court. "Prothonotary" means the Prothonotary of the Supreme Court. "Rules of court" includes forms. — **3.** Commercial causes include causes arising out of the ordinary transactions of merchants and traders; amongst others those relating to the construction of mercantile documents, export or import of merchandise, affreightment, insurance, banking and mercantile agency, and mercantile usages. — **4.** A list of commercial causes shall be kept by the Prothonotary. All proceedings in the causes on such list shall be in accordance with the provisions of this Act. No cause shall be entered on such list except upon the order of a Judge as hereinafter provided. — **5.** Either party to a Supreme Court common-law action may, by summons in the form prescribed, at any time after the commencement of such action, call upon the other party to show cause before a Judge in chambers why such action should not be entered in the said list. The Judge may order the action to be so entered, and from such order there shall be no appeal. Such Judge or any other Judge shall, by such or a subsequent order, give such directions as in his opinion are expedient for the speedy determination of the questions in the action really at issue between the parties. — **6.** To effect this purpose the Judge may inter alia do any or all of the following things: a) Dispense with pleadings; b) Dispense with the technical rules of evidence for proving any matter which is not bona fide in dispute, also with such rules as might cause expense and delay arising from commissions to take evidence and otherwise; and, without limiting the generality of this power, dispense with the proof of handwriting, documents, the identity of parties or parcels, or of authority; c) Require particulars of the cause of action, of the grounds of defence, or of any other circumstance connected with the cause to be served within a specified time by either party; d) Order mutual discoveries and inspection; e) Require either party to make admissions with respect to any question of fact involved in the cause; f) Settle the issues for trial; g) Order every cause to be tried without a jury, unless a jury shall be demanded by either party; h) State a case on matters of law for the Full Court. — **7.** The parties may, if they so desire, agree that the verdict of the jury or the decision of the Judge in a commercial cause shall be final. — **8.** The Judges or any three of them, of whom the Chief Justice, or, in his absence from the State, the senior puisne Judge, shall be one, may make rules of Court for carrying this Act

b) Victoria.¹⁾

The judicial constitution consists of a Supreme Court, with both original and appellate jurisdiction, Assizes, County Courts, and Justices, Local Courts of Mines, Courts of Marine Inquiry, and a Court of Insolvency. The practice before the Supreme Court is similar to that in England under the Judicature Acts. Like New South Wales, Victoria is named in the schedule of exemptions from the operation of the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vic. c. 27). An appeal from the decision of the Supreme Court lies to the High Court (see *supra*) and to the Privy Council (see table *infra*).

c) Tasmania.²⁾

The principal court is the Supreme Court, consisting of a Chief Justice, and two Puisne Judges, having the jurisdiction of the English courts of common law, equity, probate, divorce, and bankruptcy, administered on principles similar to those of the English Judicature Acts. There are also Local Courts of civil jurisdiction, including Courts of Request, with jurisdiction, *inter alia*, over recovery of debts up to £50, and cases of partnership up to the same amount. An appeal lies to the Supreme Court. The General Sessions of the Peace have a similar jurisdiction. Analogous is the jurisdiction of the Courts of Hobart and Launceston, presided over by a police magistrate, but the limit of amount as regards debts is £10. On request of the Governor in Council the Supreme Court may exercise jurisdiction, *inter alia*, in cases of debt from £10 to £100.

An appeal from the Supreme Court lies to the High Court (see *supra*) and to the Privy Council (see table *infra*).

d) South Australia.³⁾

The principal legal tribunal is the Supreme Court, composed of a Chief Justice and two Puisne Judges, and administering law and equity concurrently, as under the English Judicature Acts. Other courts are the Circuit Courts, presided over by Judges of the Supreme Court, a Court of Insolvency, Local Courts of Insolvency, presided over by stipendiary magistrates, Justices' courts, Police Magistrates' courts, Boards of Conciliation, a Court of Marine Inquiry, a Court of Industrial Appeals, and a Court of Appeal (now practically fallen into desuetude). An appeal lies from the Supreme Court and from the Court of Appeals to the High Court (see *supra*) and to the Privy Council (see table *infra*).

e) Queensland.⁴⁾

The judicial system of Queensland is similar to that of New South Wales. The Supreme Court consists of a Chief Justice, and four other Justices. There are also Circuit and District Courts similar to those of New South Wales. An appeal lies from the District Court to the Supreme Court. For appeals from the Supreme Court to the High Court of Australia, see above. An appeal also lies to the Privy Council (see table *infra*). The procedure in the Supreme Court is modelled upon the English Judicature Acts. Commercial causes are regulated by an Act of 1910.

f) Western Australia.⁵⁾

The judicial arrangement includes a Supreme Court, administering both law and equity, Local Courts, Justice Courts, a Court of Arbitration for industrial disputes, and Courts of Marine Inquiry. An appeal lies from the Supreme Court to the High Court (see *supra*) and to the Privy Council (see table *infra*).

into effect, and in particular for all or any of the following matters: a) For regulating the sittings of the court to try commercial causes; b) For regulating the pleading, practice, and procedure in such causes and the costs of proceedings therein. — 9. Subject to this Act and the rules made thereunder, all enactments and rules of court in force at the time of the commencement of this Act relating to actions at law shall apply to commercial causes: Provided that where any provisions in respect of the practice or procedure of the Supreme Court are contained in any Act, rules of court may be made for modifying such provisions in respect to commercial causes to any extent that may be deemed necessary. — 10. Nothing in this Act shall extend to or affect any action pending at the commencement of this Act, unless both parties to the action consent thereto. — ¹⁾ Burge, Colonial and Foreign Laws, Vol. I, p. 294. — ²⁾ Burge, Colonial and Foreign Laws, Vol. I, pp. 294—296. — ³⁾ Burge, Colonial and Foreign Laws, Vol. I, pp. 292, 293. — ⁴⁾ Burge, Colonial and Foreign Laws, Vol. I, pp. 291, 292. — ⁵⁾ Burge, Colonial and Foreign Laws, Vol. I, p. 296.

Conditions of Appeal to the Privy Council.¹⁾

APPEALS TO PRIVY COUNCIL.

27

States.	Authority under which appeals are tendered.	Appealable amount.	Limit of time within which leave to appeal must be asked.	Security required.
<p>1. New South Wales. Remarks. — By Charter of Justice, 13th October 1823 (Clark, Colonial Law, pp. 627, 636), the appealable value was £ 2000.</p>	Order in Council of 2d April, 1909 (Stat. R. and O. 1909, p. 433).	A sum exceeding or a claim to property or civil right amounting to, £ 500.	Fourteen days from the date of the judgment appealed against.	Not exceeding £ 500, and to be found within three months of the petition for leave to appeal. Execution may be suspended or carried out, respondent giving good and sufficient security. <i>Pro forma</i> judgment sufficient for purpose of appeal where judges equally divided.
<p>2. Victoria. Remarks. — As to the relation between the Order in Council and the Act, see Ex parte Rolfe (1863), 2 W. & W. (J.E. & M.) 51. See also Pearson v. Russell (1889), 15 V. L. R. 89; Commercial Bank of Australia v. McCaskill (1897), 23 V. L. R. 343; Alliance Contracting Co., Ltd. v. Russell (1898), 23 V. L. R. 546.</p>	Order in Council of 9th June, 1860 (Stat. R. and O. Rev., 1904, Vol. VI, "Judicial Committee", p. 90); and Supreme Court Act, 1890, § 231.	A sum exceeding or a claim to property or civil right amounting to, £ 500. Under the Supreme Court Act, 1890, § 231, the appealable amount is £ 1000.	Within fourteen days after date of judgment. Within thirty days.	Not exceeding £ 500. Execution may be suspended or carried out, respondent giving good and sufficient security. <i>Pro forma</i> judgment sufficient for purpose of appeal where judges equally divided.
<p>3. Tasmania Remarks. — Stat. R. and O. Rev. 1904, Vol. I., Australia, Commonwealth of, p. 50 for Charter of Justice.</p>	Charter of Justice, 4th March, 1831.	From judgment for sum above, or involving directly or indirectly claim to property or civil right of value of, £ 500.	Fourteen days.	Appellant's security regulated by Court below; within three months. Execution may be carried out or suspended, respondent or appellant giving security as case may be.
<p>4. South Australia. Remarks. — See Jour. Comp. Leg., Vol. II., p. 279.</p>	Order in Council of 15th February, 1909 (Stat. R. and O. 1909, p. 451).	A sum exceeding, or a claim to property or civil right amounting to, £ 500.	Within twenty-one days after date of judgment.	As in New South Wales.
<p>5. Queensland. Remarks. — By Constitution Act, 1867 (31 Vic. No. 38), § 24, appeal lies to Privy Council as to vacancy in Legislative Council.</p>	Order in Council of 18th October, 1909 (Stat. R. and O. 1909, p. 439).	A sum exceeding, or a claim to property or civil right amounting to, £ 500.	Twenty-one days from the date of the judgment appealed against.	As in New South Wales.
<p>6. Western Australia. Remarks. — As to appeals to Supreme Court, see Supreme Court Acts, 1880 (44 Vic. No. 10), 1886 (50 Vic. No. 28), and 1903 (3 Edw. VII., No. 10).</p>	Order in Council of 28th June, 1909 (Stat. R. and O. 1909, p. 463).	A sum exceeding or a claim to property or civil right amounting to, £ 500.	Within twenty-one days after date of judgment.	As in New South Wales.

¹⁾ Reprinted, by permission, from Burge's Colonial and Foreign Laws, Vol. I. pp. 367, 368. The order of presentation has been slightly altered. Recent amendments have been incorporated.

3. Territory of Papua.

The judicial power is vested in courts of petty sessions and in a Central Court. Under the Papua Act (No. 9 of 1905) the High Court of the Commonwealth has jurisdiction, with such exceptions and subject to such regulations as are prescribed by ordinance, to hear and determine appeals from all judgments, decrees, orders, and sentences of the Central Court, and the judgment of the High Court is final. The regulations may provide, *inter alia*, that appeals to the High Court may be by case stated, with the legal argument, if any, attached thereto in writing, and that the appearance of the parties or their counsel be unnecessary.

II. The Dominion of New Zealand.

The Supreme Court of New Zealand was established by the Ordinance of 22d December, 1841, and consists of a Chief Justice and of such Puisne Justices as may be appointed (now five). The Supreme Court is a court of record, and has the original common law and equity jurisdiction of the English courts of common law, equity, bankruptcy, the jurisdiction of the English Lord Chancellor in infancy and lunacy, jurisdiction in divorce, and criminal jurisdiction. It also has appellate jurisdiction from the inferior courts (see below) and from the High Court of the Cook Islands. The Judges of the Supreme Court may act as judges of Circuit Courts. Any two or more Judges of the Supreme Court may act as a Court of Appeal in cases of appeal from the Supreme Court. In general, the rules of procedure of the English Courts are followed¹).

Appeals from the Supreme Court to the Privy Council are regulated by Order in Council of 10th January, 1910²). An appeal lies from any judgment for the sum of, or involving directly or indirectly a claim to property or civil right amounting to or of value of £500. Leave to appeal must be requested within twenty-one days. The amount of security is fixed by the Court below, and must be furnished within three months. Pending the appeal execution may be suspended or carried out, upon proper security being given³).

District Courts were established in 1858 with criminal jurisdiction and civil jurisdiction in cases where the amount involved does not exceed £500. An appeal lies to the Supreme Court. There are also Magistrates' Courts with ordinary jurisdiction up to £100 (with certain exceptions) and extended jurisdiction up to £200, and special jurisdiction, *inter alia*, in partnership accounts up to £200, and Justices' Courts with a general limit as to amount of £20. An appeal lies to the Supreme Court. The Native Land Court and the Native Appellate Court and a Court of Arbitration for the settlement of industrial disputes were created in 1894⁴).

Note on method of presentation.

With the exception of the Companies Act, 1896 (No. 1482), of Victoria, in which the text as given in Horwitz's Victorian Statutes has been followed, the text herein given is directly taken from the copies published under authority of the Government. The exact text has been sought to be reproduced, including all errors (even typographical) contained in the official text.

Under each section will be found references, which will enable the reader to find the corresponding provisions of other acts herein reprinted and of the Imperial acts, and also the decisions of the Courts on the point involved. It is to be noted that the citations are not confined to cases decided since the enactment of the statute. In a few instances the doctrine of the cases cited has been rendered obsolete by the statutory provision; this has, in general, been indicated. The approximate date of a decision may be ascertained by referring to the bibliography.

Abbreviations, not elsewhere indicated.

C.	Commonwealth of Australia.	S. A. . . .	South Australia.
E.	England.	T.	Tasmania.
N. S. W.	New South Wales.	V.	Victoria.
N. Z. . . .	New Zealand.	W. A. . . .	Western Australia.
Q.	Queensland.		

¹) Burge, Colonial and Foreign Laws, Vol. I, p. 300. — ²) Stat. R. & O. 1910, —

³) Ibid. — ⁴) Burge, Colonial and Foreign Laws, Vol. I, pp. 300—302.

I.

The Commonwealth of Australia.

A. Commonwealth Statutes.

Sea-Carriage of Goods Act, 1904.

No. 14 of 1904. An Act relating to the Sea-Carriage of Goods
(15th December, 1904).¹⁾

Short title. 1. This Act may be cited as the *Sea-Carriage of Goods Act, 1904*. — W. A. 1.

Commencement of Act. 2. This Act shall commence on the first day of January, One thousand nine hundred and five. — W. A. 2.

Definition. 3. In this Act, "goods" includes every description of wares, merchandise, and things, except live animals. — W. A. 3.

Application of Act. 4. 1. This Act shall apply only in relation to ships carrying goods from any place in Australia to any place outside Australia, or from one State to another State, and in relation to goods so carried, or received to be so carried, in those ships. 2. This Act shall not apply to any bill of lading or document made before the thirtieth day of June, One thousand nine hundred and five, in pursuance of a contract or agreement entered into before the seventeenth day of November, One thousand nine hundred and four. — W. A. 4. Cp. 27 U. S. Stat. L. 445 (Act 13th February, 1893, c. 105). Like the American Act upon which it is modelled, the Commonwealth Act is limited in its application to foreign and interstate shipments (Commonwealth Constitution, § 51). The language of the Act is broad enough to cover both British and foreign vessels. — Cp. *The Silvia*, 171 U. S. 462. But it does not, like the American Act, apply to shipments from a foreign to a domestic port. — *Knott v. Botany Mills*, 179 U. S. 69.

Certain clauses prohibited in bills of lading. 5. Where any bill of lading or document contains any clause, covenant, or agreement whereby: a) The owner, charterer, master, or agent of any ship, or the ship itself, is relieved from liability for loss or damage to goods arising from the harmful or improper condition of the ship's hold, or any other part of the ship in which goods are carried, or arising from negligence, fault, or failure in the proper loading, stowage, custody, care, or delivery of goods received by them or any of them to be carried in or by the ship; or b) Any obligations of the owner or charterer of any ship to exercise due diligence, and to properly man, equip, and supply the ship, to make and keep the ship seaworthy, and to make and keep the ship's hold, refrigerating and cool chambers, and all other parts of the ship in which goods are carried fit and safe for their reception, carriage, and preservation, are in any wise lessened, weakened, or avoided; or c) The obligations of the master, officers, agents, or servants of any ship to carefully handle and stow goods, and to care for, preserve, and properly deliver them, are in any wise lessened, weakened, or avoided, that clause, covenant, or agreement shall be illegal, null and void, and of no effect. — Cp. 27 U. S. Stat. L. 445 §§ 1, 2. W. A. 5; N. Z. 1908, No. 178, § 300. A stipulation limiting the amount of liability is clearly within the prohibition. — Cp. *Knott v. Botany Mills*, 179 U. S. 69. At common law there is an implied warranty upon the part of the shipowner that the vessel was seaworthy at the beginning of her voyage. This obligation is not altered by the Act. — Commonwealth Act § 8; *The Carib Prince*, 170 U. S. 655. The American Act, however, relaxes in some respects the rigor of the common law, and permits the shipowner to contract himself out of the common law liability, provided he has exercised due diligence to make and keep the ship seaworthy. — *The Southwark*, 191 U. S. 1. Seaworthiness is a relative term. It means not alone an ability to withstand the perils of the sea, but also that the vessel is adapted to the transportation of the particular kind of cargo involved. Thus, although the American Act does not specifically refer to the furnishing of proper refrigerating apparatus for the transportation of perishable cargo, yet it has been held that a failure to furnish proper

¹⁾ The references in the notes are to the New Zealand Act indicated and to the Western Australia Act (No. 26 of 1909), both reprinted *infra*.

refrigerating apparatus is a failure to furnish a vessel in seaworthy condition for carrying perishable cargo. — *The Southwark*, 191 U. S. 1.

Construction and jurisdiction. 6. All parties to any bill of lading or document relating to the carriage of goods from any place in Australia to any place outside Australia shall be deemed to have intended to contract according to the laws in force at the place of shipment, and any stipulation or agreement to the contrary, or purporting to oust or lessen the jurisdiction of the Courts of the Commonwealth or of a State in respect of the bill of lading or document, shall be illegal, null and void, and of no effect. — It has been held by the United States Supreme Court that a contract of carriage exempting the vessel from liability for the negligence or default of its servants, entered into in a country under the laws of which such stipulations are valid, and where the contract specifically provided that its terms should be governed by the foreign law, could not be set up as a defence to an action brought in an American court for damages resulting from negligence, where the shipment was from a foreign port to an American port, and where the vessel was under the American flag. Such stipulations were declared to be contrary to the policy of the forum. — *The Kensington*, 183 U. S. 263.

Penalties 7. The owner, charterer, master, or agent of a ship shall not: a) Insert in any bill of lading or document any clause, covenant, or agreement declared by this Act to be illegal; or b) Make, sign, or execute any bill of lading or document containing any clause, covenant, or agreement declared by this Act to be illegal. Penalty: One hundred pounds. — W. A. 6.

Implied clauses in bills of lading. 8. 1. In every bill of lading with respect to goods a warranty shall be implied that the ship shall be, at the beginning of the voyage, seaworthy in all respects and properly manned, equipped, and supplied. 2. In every bill of lading with respect to goods, unless the contrary intention appears, a clause shall be implied whereby, if the ship is at the beginning of the voyage seaworthy in all respects and properly manned, equipped, and supplied, neither the ship nor her owner, master, agent, or charterer shall be responsible for damage to or loss of the goods resulting from: a) Faults or errors in navigation, or b) Perils of the sea or navigable waters, or c) Acts of God or the King's enemies, or d) The inherent defect, quality, or vice of the goods, or e) The insufficiency of package of the goods, or f) The seizure of the goods under legal process, or g) Any act of omission of the shipper or owner of the goods, his agent or representative, or h) Saving or attempting to save life or property at sea, or i) Any deviation in saving or attempting to save life or property at sea. — W. A. 7. *Semble*, the burden of proof that the vessel is seaworthy is on the carrier. — Cp. *The Southwark*, 191 U. S. 1. The American act exempts from liability for loss resulting "from faults or errors in navigation or in the management" of the vessel, and hence includes some cases where liability would attach under the Commonwealth Act. It has been held that no liability attaches for loss through the mistake or carelessness of the master in attempting to enter a bay at ebb tide, thereby stranding the vessel. — *In re Meyer*, 74 Fed. Rep. 881. Nor for failure to keep a lookout. — *The Rosedale*, 88 Fed. Rep. 324, affirmed 92 Fed. Rep. 1021. Nor for omission to open sluices during a heavy storm. — *The Sandfield*, 92 Fed. Rep. 663. Nor for failure to close port holes. — *The Silvia*, 171 U. S. 462. Nor for failure to use the pumps. — *The Merida*, 107 Fed. Rep. 146.

Commerce (Trade Descriptions) Act, 1905.

No. 16 of 1905. An Act relating to Commerce with other Countries
(8th December, 1905).

Introductory.

Short title and commencement. 1. This Act may be cited as the *Commerce (Trade Descriptions) Act, 1905*, and shall commence on a day to be fixed by proclamation not being earlier than six months after the passing of this Act.

Incorporation. 2. This Act shall be incorporated and read as one with the *Customs Act, 1901*.

Definitions. 3. In this Act, unless the contrary intention appears: "Officer" means an officer of Customs. "Trade description", in relation to any goods, means any description, statement, indication, or suggestion, direct or indirect: a) As to the nature, number, quantity, quality, purity, class, grade, measure, gauge, size, or weight of the goods; or b) As to the country or place in or at which the

goods were made or produced; or c) As to the manufacturer or producer of the goods or the person by whom they were selected, packed, or in any way prepared for the market; or d) As to the mode of manufacturing, producing, selecting, packing, or otherwise preparing the goods; or e) As to the material or ingredients of which the goods are composed, or from which they are derived; or f) As to the goods being the subject of an existing patent, privilege, or copyright, and includes a Customs entry relating to goods; and any mark which according to the custom of the trade or common repute is commonly taken to be an indication of any of the above matters shall be deemed to be a trade description within the meaning of this Act. "False trade description" means a trade description which, by reason of anything contained therein or omitted therefrom, is false or likely to mislead in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement, or otherwise, which makes the description false or likely to mislead in a material respect.

When false trade description deemed to be applied to goods. 4. 1. A trade description shall be deemed to be applied to goods if: a) It is applied to the goods themselves; or b) It is applied to any covering, label, reel, or thing used in connexion with the goods; or c) It is used in any manner likely to lead to the belief that it describes or designates the goods. 2. "Covering" includes any stopper, glass, bottle, vessel, box, capsule, case, frame, or wrapper; and "label" includes any band or ticket.

Inspection of imports and exports.

Inspection of imports and exports. 5. 1. An officer may inspect and examine all prescribed goods which are imported, or which are entered for export or brought for export to any wharf or place. 2. The officer may where practicable take samples of any goods inspected by him pursuant to this section, and the samples so taken shall be dealt with as prescribed. 3. For the purposes of this section an officer may enter any ship, wharf, or place, and may open any packages, and may do all things necessary to enable him to carry out his powers and duties under this section.

Notice of intention to export. 6. Every person who intends to export any goods of a kind or class required under this Act to be inspected or examined by an officer shall, if required to do so by regulation, before the goods are shipped, give notice, in accordance with the regulations, to the Customs of his intention to export the goods and of the place where the goods may be inspected. Penalty: Twenty pounds.

Imports.

Prohibition of imports not bearing prescribed trade description. 7. 1. The regulations may prohibit the importation or introduction into Australia of any specified goods unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed. 2. All goods imported in contravention of any regulation under this section may be detained by the Collector and may by direction of the Minister be seized as forfeited to the King. 3. Subject to the regulations, the Comptroller-General, or on appeal from him the Minister, may in any case, and if in his opinion the contravention has not occurred either knowingly or negligently shall permit any goods which are liable to be or have been seized as forfeited under this section to be delivered to the owner or importer upon security being given to the satisfaction of the Comptroller-General that the prescribed trade description will be applied to the goods or that they will be forthwith exported. 4. No regulation under this section shall take effect until after the expiration of not less than three months from notification in the *Gazette*.

Imported goods found in Australia without prescribed trade description. 8. All imported goods to which a trade description is by this Act or the regulations required to be applied, and which are found in Australia in any package or covering in which they were imported, and without the prescribed trade description, shall until the contrary is proved be deemed to have been imported in contravention of this Act or of the regulations as the case may be.

Importation of falsely marked goods. 9. No person shall import any goods to which a false trade description is applied. Penalty: One hundred pounds. It

shall be a defence to a prosecution for an offence against this section if the defendant proves that he did not knowingly import the goods in contravention of this section.

Forfeiture of falsely marked goods. 10. All goods to which any false trade description is applied are hereby prohibited to be imported, and shall if imported be forfeited to the King. Provided that the Comptroller-General, or on appeal from him the Minister, may, if he is satisfied that any goods which have been seized as forfeited under this section were not knowingly imported in contravention of this Act, permit the importer to correct the false trade description, and may, when the correction has been made to his satisfaction, order the release of the goods, subject to the payment by the importer to the Customs of the expenses of the seizure, and thereupon the forfeiture shall be remitted.

Exports.

Prohibition of exports not bearing the prescribed trade description. 11. 1. The regulations may prohibit the exportation of any specified goods, unless there is applied to them a trade description of such character, relating to such matters, and applied in such manner, as is prescribed. 2. All such goods to which the prescribed trade description is not applied, which are exported or entered for export or put on board any ship or boat for export or brought to any wharf or place for export, may be detained by the Collector, and may by direction of the Minister be seized as forfeited to the King. 3. Subject to the regulations, the Comptroller-General, or on appeal from him the Minister, may in any case, and if in his opinion the contravention has not occurred either knowingly or negligently shall permit any goods which are liable to be or have been seized as forfeited under this section to be delivered to the owner or exporter, upon security being given to the satisfaction of the Comptroller-General that the goods shall not be exported in contravention of the regulations.

Penalty for applying false trade description to exports. 12. No person shall: a) Knowingly apply any false trade description to any goods intended or entered for export or put on any ship or boat for export, or brought to any wharf or place for the purpose of export; or b) Knowingly export or enter for export or put on any ship or boat for export any goods to which a false trade description is applied. Penalty: One hundred pounds.

Exportation of falsely marked goods. 13. All goods to which any false trade description is applied are hereby prohibited to be exported, and shall, if exported or entered for export or put on any ship or boat for export, or brought to any wharf or place for the purpose of export, be forfeited to the King. Provided that the Comptroller-General, or on appeal from him the Minister, may, if he is satisfied that the owner of any goods which have been seized as forfeited under this section did not knowingly act in contravention of this Act, permit the correction of the false trade description, and may, when the correction has been made to his satisfaction, order the release of the goods, subject to the payment by the exporter of the expenses of the seizure, and thereupon the forfeiture shall be remitted.

Marking of goods for export. 14. Any goods intended for export which have been inspected in pursuance of this Act may in manner prescribed be marked with the prescribed trade description.

Application of sections 7 and 11. 15. Sections seven and eleven of this Act shall not apply to any goods other than: a) Articles used for food or drink by man, or used in the manufacture or preparation of articles used for food or drink by man; or b) Medicines or medicinal preparations for internal or external use; or c) Manures; or d) Apparel (including boots and shoes) and the materials from which such apparel is manufactured; or e) Jewellery; or f) Seeds and plants.

Trade description disclosing trade secrets. 16. The regulations under sections seven and eleven of this Act shall not prescribe a trade description which discloses trade secrets of manufacture or preparation, unless in the opinion of the Governor-General the disclosure is necessary for the protection of the health or welfare of the public.

Miscellaneous.

Regulations. 17. The Governor-General may make regulations not inconsistent with this Act prescribing all matters and things required or permitted by this Act to be prescribed or which are necessary and convenient to be prescribed

for carrying out or giving effect to this Act, and particularly for the analysis of samples taken under this Act, and the extent to which certificates of analysis shall be *prima facie* evidence in proceedings under this Act of the facts therein stated.

Aiding or abetting offences. 18. Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in the commission of any offence against this Act shall be deemed to have committed that offence, and shall be punishable accordingly.

Secret Commissions Act, 1905.¹⁾

No. 10 of 1905. An Act relating to Secret Commissions, Rebates, and Profits (16th November, 1905).

Short title. 1. This Act may be cited as the *Secret Commissions Act, 1905*. — E. § 4; V. 1; T. 1.; S. A. 1; W. A. 1; N. Z. 1.

Application. 2. This Act applies to trade and commerce with other countries and among the States, and to agencies of and contracts with the Commonwealth or any Department or officer thereof.

Definitions. 3. In this Act: "Agent" includes any corporation, firm, or person employed by or acting or having been acting or desiring or intending to act for or on behalf of any other corporation, firm, or person, whether as agent, partner, factor, broker, servant, trustee, director, or in any other capacity, and whether he acts in the name of the principal or in any other name, and in the case of a firm includes a member of the firm. It also includes a person serving under the Crown. "Agency" has a meaning corresponding with that of "agent". "Consideration" means valuable consideration of any kind, and particularly includes discounts, commission and rebates, bonuses, deductions and percentages, and also employment or an agreement to give employment in any capacity. "Full knowledge" means knowledge of all material facts and circumstances. "Principal" includes a corporation, firm, or person who employs the agent or for or on behalf of whom the agent acts or has been acting or desires or intends to act. — E. § 1; V. 18; T. 20; S. A. 2; W. A. 20; N. Z. 2.

Secret gifts accepted by or offered to agent as inducement or reward. 4. 1. Any person who, without the full knowledge and consent of the principal, directly or indirectly: a) Being an agent of the principal accepts or obtains or agrees or offers to accept or obtain from any person for himself or for any person other than the principal; or b) Gives or agrees to give or offers to an agent of the principal or to any person at the request of an agent of the principal any gift or consideration as an inducement or reward: i) For any act done or to be done, or any forbearance observed or to be observed, or any favour or disfavour shown or to be shown, in relation to the principal's affairs or business, or on the principal's behalf; or ii) For obtaining or having obtained or aiding or having aided to obtain for any person an agency or contract for or with the principal shall be guilty of an indictable offence. Penalty: In the case of a corporation, one thousand pounds; in the case of any other person, two year's imprisonment or five hundred pounds, or both. 2. A gift or consideration shall be deemed to be given as an inducement or reward if the receipt or any expectation thereof would be in any way likely to influence the agent to do or to leave undone something contrary to his duty. — E. § 1; V. 2; T. 2, 3; S. A. 4; W. A. 2, 3; N. Z. 3, 4.

False account given to or received or used by agent. 5. Any person who: a) Gives to an agent; or b) Being an agent receives or uses, with intent to deceive the principal, any receipt, account, or document in respect of which the principal is interested, or in relation to a dealing, transaction, or matter in which the principal is interested, the receipt, account, or document being false, erroneous, or defective in any material particular, or likely in any way to mislead the principal, shall be guilty of an indictable offence. Penalty: In the case of a corporation,

¹⁾ The English Act (E.) cited is the *Prevention of Corruption Act, 1906* (6 Edw. 7, c. 34.). The Australian and New Zealand acts are given *infra*.

one thousand pounds; in the case of any other person, two years' imprisonment or five hundred pounds, or both. — E. § 1; V. 4; T. 5; S. A. 6; W. A. 5; N. Z. 4, 5.

Agent secretly buying from or selling to himself. 6. Any agent who, without the full knowledge and consent of the principal, buys from or sells to himself, or any firm of which he is a partner, or any company of which he is a director, manager, officer, or employee, or in which he or any person for him or on his behalf is a shareholder, any goods for or on behalf of his principal, shall be guilty of an indictable offence. Penalty: In the case of a corporation, one thousand pounds; in the case of any other person, two years' imprisonment or five hundred pounds, or both.

Principal may recover amount of secret gift. 7. 1. Where any gift or consideration has in contravention of this Act been given by any person to an agent, the principal may, in any court of competent federal jurisdiction, recover the amount or the money value thereof either from the agent or from the person who gave the gift or consideration to the agent. 2. No conviction or acquittal of the defendant in respect of an offence under this Act shall operate as a bar to proceedings under this section.

Incriminating answers and discovery. 8. No person shall in any civil or criminal proceeding be excused from answering any question, put either *visà voce* or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may criminate or tend to criminate him in respect of an offence against this Act; but his answer shall not be admissible in evidence against him in any criminal proceeding, other than a prosecution for perjury. — V. 11; T. 13; S. A. 14; W. A. 13; N. Z. 15.

Evidence. 9. In any civil or criminal proceeding under this Act evidence shall not be admissible to show that any such gift or consideration as is mentioned in this Act is customary in any trade or calling. — V. 13; T. 15; S. A. 16; W. A. 15.

Aiding and abetting offences. 10. Whoever aids, abets, counsels, or procures or is in any way directly or indirectly knowingly concerned in or privy to; a) The commission of any offence against this Act; or b) The commission outside Australia of any act, in relation to the affairs or business or on behalf of a principal residing in Australia, which if committed in Australia would be an offence against this Act, shall be deemed to have committed the offence and be punishable accordingly. — V. 7; T. 9; S. A. 10; W. A. 9; N. Z. 9.

Information upon oath. 11. Every information (other than an indictment) for any offence under this Act shall be upon oath. — E. § 2; V. 17; T. 19; S. A. 20; W. A. 19; N. Z. 10.

Australian Industries Preservation Acts, 1906—1910.

a) No. 9 of 1906. An Act for the Preservation of Australian Industries, and for the Repression of Destructive Monopolies (24th September, 1906).¹⁾

Part I. Preliminary.

Short title. 1. This Act may be cited as the *Australian Industries Preservation Acts, 1906—1910*.

Division of Act. 2. This Act is divided into Parts as follows: Part I. Preliminary. Part II. Repression of Monopolies. Part III. Prevention of Dumping.

Interpretation. 3. In this Act, unless the contrary intention appears: "Commercial trust" includes a combination, whether wholly or partly within or beyond Australia, of separate and independent persons (corporate or unincorporate) whose voting power or determinations are controlled or controllable by: a) The creation of a trust as understood in equity, or of a corporation, wherein the trustees or corporation hold the interests, shares, or stock of the constituent persons; or b) An agreement; or c) The creation of a board of management or its equivalent; or d) Some similar means; and includes any division, part, constituent person, or agent of a commercial trust. "Inadequate remuneration for labour" includes inadequate pay or excessive hours or any terms or condi-

¹⁾ Incorporating the amendments made by Nos. 5 of 1908, 26 of 1909, and 29 of 1910.

tions of labour or employment unduly disadvantageous to workers. "Person" includes corporation and firm and a commercial trust. "The Comptroller-General" means the Comptroller-General of Customs. "Answer questions" means that the person on whom the obligation of answering questions is cast shall, to the best of his knowledge, information, and belief truly answer all questions on the subject mentioned that the Comptroller-General or the person named by him shall ask. "Produce documents" means that the person on whom the obligation to produce documents is cast shall, to the best of his power, produce to the Comptroller-General or to the person named by him all documents relating to the subject-matter mentioned. — It has been held that a State is neither a person nor a corporation within the meaning of those terms as used in the American Anti-Trust Act. — *Lowenstein v. Evans*, 69 Fed. Rep. 908.

Part II. Repression of Monopolies.

Restraint of interstate or external trade and destruction of industries. 4. 1. Any person who, either as principal or as agent, makes or enters into any contract, or is or continues to be a member of or engages in any combination in relation to trade or commerce with other countries or among the States: a) in restraint of or with intent to restrain trade or commerce; or b) to the destruction or injury of or with intent to destroy or injure by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers, is guilty of an offence. Penalty: Five hundred pounds or in case of a continuing offence, five hundred pounds for each day during which the offence continues. 2. Every contract made or entered into in contravention of this section shall be absolutely illegal and void. 3. It shall be a defence to a proceeding for an offence under paragraph (a) of subsection 1. of this section, an answer to an allegation that a contract was made or entered into in restraint of, or with intent to restrain, trade or commerce, if the party alleged to have contravened this section proves: (a) that the matter or thing alleged to have been done in restraint of, or with intent to restrain, trade or commerce, was not the detriment of the public, and (b) that the restraint of trade or commerce effected or intended was not unreasonable. — Under the Commonwealth Constitution (§ 51) the Act is necessarily limited in its application to trade and commerce with other countries and among the States. It can have no application to purely intrastate transactions. — *Cp. U. S. v. E. C. Knight Co.*, 156 U. S. 1. — One important distinction between the Commonwealth Act and the American Act (Act of 2d July, 1890, c. 647, 26 U. S. Stat. L. 209) upon which it is modelled is to be noted. The American Act applies to all direct restraints on interstate and foreign commerce. — *U. S. v. Joint Traffic Association*, 171 U. S. 505. The Commonwealth Act applies only to such agreements and combinations as are detrimental to the public or injurious to an Australian industry which it is advantageous to the Commonwealth to preserve. — *Cp. §§ 5, 6, 7, 8, 10, 18.* And the American Act is, by judicial interpretation, limited in its application to monopolies imposing an undue restraint on interstate or foreign commerce. — *U. S. v. Standard Oil Co.*, (May 15, 1911). — The American Act has been held to apply to agreements and combinations to increase or decrease the price of commodities, the objects of interstate or foreign commerce. — *Addyston-Pipe, etc., Co. v. U. S.*, 175 U. S. 211. To the regulation of charges of transportation by interstate carriers. — *U. S. v. Joint Traffic Association*, 171 U. S. 505. To the obstruction of interstate traffic by force and violence of a combination of strikers. — *U. S. v. Debs*, 64 Fed. Rep. 724. To organized boycotts by labor unions interfering with an interstate business. — *Loewe v. Lawlor*, 208 U. S. 274. It is settled that it is not essential that the result of the agreement be a complete monopoly. It is sufficient if it really tends to that end, and to deprive the public of the advantages of free competition. But the Act is not intended to affect contracts which have only a remote and indirect bearing on interstate and foreign commerce. — *Field v. Barber Asphalt Paving Co.*, 194 U. S. 618.

[§ 5 is repealed.] — This section was ultra vires the Commonwealth Parliament. — *Huddart Parker & Co. v. Moorehead*, 8 C. L. R. 330.

Unfair competition. 6. 1. For the purposes of section four and section ten, unfair competition means competition which is unfair in the circumstances; and in the following cases the competition shall be deemed to be unfair unless the contrary is proved: a) If the defendant is a commercial trust; b) If the competition would probably or does in fact result in an inadequate remuneration for labour in the Australian industry; c) If the competition would probably or does in fact result in creating substantial disorganization in Australian industry or throwing workers out of employment; d) If the defendant, with respect to any goods or services which are the subject of the competition, gives, offers, or

promises to any person any rebate, refund, discount, or reward upon condition that that person deals, or in consideration of that person having dealt, with the defendant to the exclusion of other persons dealing in similar goods or services. 2. In determining whether the competition is unfair, regard shall be had to the management, the processes, the plant, and the machinery employed or adopted in the Australian industry affected by the competition being reasonably efficient, effective, and up-to-date.

Monopoly of interstate or external trade. 7. 1. Any person who monopolizes or attempts to monopolize, or combines or conspires with any other person to monopolize, any part of the trade or commerce with other countries or among the States, is guilty of an indictable offence. Penalty: Five hundred pounds for each day during which the offence continues, or one year's imprisonment, or both; or in the case of a corporation, one thousand pounds for each day during which the offence continues. 2. Every contract made or entered into in contravention of this section shall be absolutely illegal and void. 3. The Attorney-General may elect, instead of proceeding by indictment for an offence against this section, to institute proceedings in the High Court by way of civil action for the recovery of the pecuniary penalties for the offence; in which case the action shall be tried before a Justice of that Court without a jury. — Cp. 26 U. S. Stat. L. 209, § 2. — It has been suggested that the language of the American Act, which is similar to that of the Commonwealth Act, is broad enough to cover cases of monopolies owned by single individuals. — *Northern Securities Co. v. U. S.* 193 U. S. 197 (dissenting opinions).

Unfair concessions by persons. 7A. 1. Any person who, in relation to trade or commerce with other countries or among the States, either as principal or agent, in respect of dealings in any goods or services gives offers or promises to any other person any rebate, refund, discount, concession, or reward, for the reason, or upon the condition express or implied, that the latter person: a) Deals or has dealt, or will deal, or intends to deal, exclusively with any person, either in relation to any particular goods or services or generally; or b) Deals, or has dealt, or will deal, or intends to deal, exclusively with members of a commercial trust, either in relation to any particular goods or services or generally; or c) Does not deal, or has not dealt, or will not deal, or does not intend to deal, with certain persons, either in relation to any particular goods or services or generally; or d) Is or becomes a member of a commercial trust, is guilty of an offence. Penalty: Five hundred pounds. 2. Every contract made or entered into in contravention of this section shall be absolutely illegal and void. 3. It shall be a defence to a prosecution under this section, and an answer to an allegation that a contract was made or entered into in contravention of this section, if the party alleged to have contravened this section proves that the matter or thing alleged to have been done in contravention of this section was not to the detriment of the public, and did not constitute competition which was unfair in the circumstances and was not destructive of or injurious to any Australian industry.

Improper refusals to sell persons. 7B. Any person who, in relation to trade and commerce with other countries or among the States, either as principal or agent, refuses either absolutely or except upon disadvantageous conditions to sell or supply to any other person any goods or services for the reason that the latter person: a) Deals, or has dealt, or will deal, or intends to deal, with any person; or b) Deals, or has dealt, or will deal, or intends to deal, with persons who are not members of a commercial trust; or c) Is not a member of a commercial trust, is guilty of an offence. Penalty Five Hundred pounds.

[§ 8 is repealed.] — This section was ultra vires the Commonwealth Parliament. — *Huddart Parker & Co. v. Moorehead*, 8 C. L. R. 330.

Aiding and abetting. 9. Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in or privy to: a) The commission of any offence against this Part of this Act; or b) The doing of any act outside Australia which would, if done within Australia, be an offence against this Part of this Act, shall be deemed to have committed the offence. Penalty: Five hundred pounds.

Injunction. 10. 1. The Attorney-General, or any person thereto authorized by him, may institute proceedings in the High Court to restrain by injunction after hearing and determining the merits and not by way of interlocutory order the carrying out of any contract made or entered into after the commencement of

this Act or any combination which a) Is in restraint of trade or commerce; or b) Is destructive or injurious, by means of unfair competition, to any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers. Provided that this section shall only apply to contracts or combinations in relation to commerce with other countries or among the States. 2. On the conviction of any person for an offence under this Part of this Act the Justice before whom the trial takes place shall, upon application by or on behalf of the Attorney-General or any person thereto authorized by him, grant an injunction restraining the convicted person and his servants and agents from the repetition or continuance of the offence of which he has been convicted. — Cp. 26 U. S. Stat. L. 209, § 4.

Disobedience to injunction. 10A. 1. Any person who does any act or thing in disobedience of an injunction granted under this part of this Act shall be guilty of an offence. Penalty: Five hundred pounds for each day during which the offence continues. 2. This section shall not be deemed to derogate from the power of the High Court, apart from this section, to enforce obedience to the injunction.

Action for treble damages. Incriminating answer or discovery. 11. 1. Any person who is injured in his person or property by any other person, by reason of any act or thing done by that other person in contravention of this Part of this Act, or by reason of any act or thing done in contravention of any injunction granted under this Part of this Act, may, in the High Court, before a Justice without a jury, sue for and recover treble damages for the injury. 2. No person shall, in any proceeding under this section, be excused from answering any question put either *viva voce* or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may criminate or tend to criminate him; but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury. — Cp. 26 U. S. Stat. L. 210, § 7. Under the American Act it has been held that the action for treble damages must be a direct one, and that the same cannot be recovered by way of set-off against a claim of the person charged with a violation of the Act. — *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540. The measure of damages under ordinary circumstances is the difference between the price paid and the price under natural conditions. — *Atlanta v. Chattanooga Foundry Co.*, 127 Fed. Rep. 23. Only actual damages, it has been held, are recoverable, not speculative or remote damages. — *Cent. Coal, etc., Co. v. Hartman*, 111 Fed. Rep. 96. But the loss of profits from the interruption of an established business are recoverable. — *Ibid.*

Special jury. 12. The jury panel for the trial of any offence against this Part of this Act, or for the trial of any action or issue under this Part of this Act, shall be taken from the list of special jurors (if any) in the State or part of the Commonwealth in which the trial takes place.

Trial of offences. Second offence. 13. 1. Proceedings for the recovery of pecuniary penalties for offences against this Part of this Act (other than indictable offences or offences against section fifteen B), section fifteen C) or section fifteen E) shall be instituted in the High Court by way of civil action and shall be tried before a Justice of that Court without a jury. 2. Any offence against this Part of this Act committed by a person who has previously been convicted of any offence against this Part of this Act shall be an indictable offence, punishable on conviction by a penalty not exceeding five hundred pounds, or imprisonment for any term not exceeding one year, or both; in the case of a corporation, by a penalty not exceeding one thousand pounds.

No proceeding without authority of Attorney-General. 14. 1. No proceeding for an indictable offence or for the recovery of penalties shall be instituted under this Part except by the Attorney-General or some person authorized by him. 2. No other proceeding shall be instituted under this Part without the written consent of the Attorney-General.

Information, etc., to suffice if in words of this Act. 14A. In any proceeding for an offence against this Part of this Act, any indictment, information, statement of claim, conviction, warrant, or other process shall suffice if the offence is set forth as nearly as may be in the words of this Act.

Evidence. 14B. No person shall, in any proceeding for an offence against this Part of this Act, be excused from answering any question, put either *viva voce* or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may tend to criminate him or make him liable to

a penalty; but his answer shall not be admissible in evidence against him in any civil or criminal proceeding other than a proceeding for an offence against this Act or a prosecution for perjury.

Minutes, records, etc., to be evidence. 14C. In any proceeding for an offence against this Part of this Act, wherein a combination or conspiracy or attempted combination or conspiracy in contravention of this Act is alleged, any book, document, paper, or writing containing: (a) any minute, note, record, or memorandum of any proceeding at any meeting of the persons or any of the persons alleged to have been parties or privy to the combination, conspiracy, or attempt, or (b) any entry purporting to be a copy of or extract from any such book, document, paper, or writing, shall, upon proof that it was produced by or came from the custody of those persons or any of them, or of a responsible officer, or a representative of those persons or any of them (i) be admissible in evidence against those persons; and (ii) be evidence that the matter and things thereby appearing to have been done by those persons or any of them were so done, and that any person thereby appearing to have been present at the meeting was so present.

Books, letters, documents, etc., to be evidence. 14D. In any proceeding for an offence against this Part of this Act, any book, letter, document, paper, or writing, or anything purporting to be a copy of or extract from any book, letter, document, paper, or writing, containing any reference to any matter or thing alleged to be done in contravention of this Act, shall, upon proof that it was produced by or came from the custody of a person charged with the offence, or a responsible officer or a representative of that person: (a) be admissible in evidence against that person; and (b) be evidence of the matters and things thereby appearing, and that the book, letter, document, paper, or writing (or, in the case of a copy, that the original thereof) was written, signed, despatched, and received, and that any such copy or extract is a true copy of or extract from the original or from which it purports to be a copy or extract.

Public notification of terms of contract or combination. Notice by Attorney-General. Innocent intent presumed. 15. 1. Any person party to a contract or member of a combination or in any way concerned in carrying out the contract or the objects of the combination may: a) Lodge with the Attorney-General a statutory declaration by himself, or in the case of a corporation by some one approved of in that behalf by the Attorney-General setting forth truly, fully, and completely the terms and particulars of the contract, or the purposes, objects, and terms of agreement or constitution of the combination, as the case may be, and an address in Australia to which notices may be sent by the Attorney-General; and b) Publish the statutory declaration in the *Gazette*. 2. The Attorney-General may at any time send notice to the person abovementioned (hereinafter called the declarant), to the address mentioned in the statutory declaration, that he considers the contract or combination likely to restrain trade or commerce to the detriment of the public, or to destroy or injure an Australian industry by unfair competition. 3. In any proceeding against the declarant in respect of any offence against section four of this Act, alleged to have been committed by him in relation to the contract or combination after the time the statutory declaration has been lodged and published, and before any notice as aforesaid has been sent to him by the Attorney-General, it shall be deemed (but as regards the declarant only and not as regards any other person) that the declarant had no intent to contravene the provisions of the section, if he proves that the statutory declaration contains a true, full, and complete statement of the terms and particulars of the contract, or the purposes, objects, and terms of agreement or constitution of the combination, as the case may be, at the date of the statutory declaration and at the date of the alleged offence.

Burden of proof. 15A. In any prosecution for an offence against sections four, seven, seven A, seven B, or nine of this Act the averments of the prosecutor contained in the information, declaration, or claim shall be deemed to be proved in the absence of proof to the contrary, but so that: a) The averment in the information of intent shall not be deemed sufficient to prove such intent, and b) In all proceedings for an indictable offence the guilt of the defendant must be established by evidence.

Power to require persons to answer questions and produce documents. 15B. 1. If the Comptroller-General believes that an offence has been committed against this

Part of this Act, or if a complaint has been made in writing to the Comptroller-General that an offence has been committed against this Part of this Act, and the Comptroller-General believes that the offence has been committed, he may by writing under his hand require any person whom he believes to be capable of giving any information in relation to the alleged offence to answer questions and to produce documents to him or to some person named by him in relation to the alleged offence. 2. No person shall refuse or fail to answer questions or produce documents when required to do so in pursuance of this section. Penalty: Fifty pounds. 3. The Comptroller-General or any person to whom any documents are produced in pursuance of this section may take copies of or extracts from those documents. 4. No person shall be excused from answering any questions or producing any documents when required to do so under this section on the ground that the answer to the question or the production of the document might tend to criminate him or make him liable to a penalty; but his answer shall not be admissible in evidence against him in any civil or criminal proceeding other than a proceeding for an offence against this Part of this Act. — This section is *intra vires* the Commonwealth Parliament. — *Huddart Parker & Co. v. Moorehead*, 8 C. L. R. 330.

Production of documents. 15C. 1. Whenever a complaint on oath has been made in writing to the Comptroller-General that any person or any foreign corporation or any trading or financial corporation formed within the Commonwealth has been guilty of any offence against this Part of this Act, the Comptroller-General, if he believes the complaint to be well founded, may, by writing, require any such person, or foreign corporation, or trading or financial corporation, or any member, officer, or agent of any such corporation, to produce and hand over to him or to some person appointed by him in writing all books and documents relating to the subject-matter of the complaint and all books and documents of any kind whatsoever wherein any entry or memorandum appears in any way relating to the subject-matter of the complaint. 2. Every person or foreign corporation, or trading or financial corporation required by the Comptroller-General as aforesaid to produce to him or to some person appointed by him in writing any books or documents shall forthwith produce and hand over such books or documents accordingly. Penalty: One hundred pounds. 3. The Comptroller-General or any person appointed by him in writing may inspect all books and documents produced in pursuance of this section and may make copies of or extracts from those books or documents.

Impounding of documents. 15D. The Comptroller-General may impound or retain any book or document produced to him or to any person so appointed by him in pursuance of the preceding section, but the person or corporation otherwise entitled to such book or document shall in lieu thereof be entitled to a copy certified as correct by the Comptroller-General, and such certified copy shall be receivable in all Courts as evidence and of equal validity with the original. And until such certified copy is supplied the Comptroller-General may at such times and places as he shall think proper permit such person, or in the case of a corporation any person appointed for the purpose by the corporation, to inspect and take extracts from the books or documents so impounded or retained.

Information not to be disclosed. 15E. No person shall disclose any information gained by him in the exercise of the powers conferred by the last three preceding sections except: a) To the Attorney-General, or some person authorized by him; b) To the Comptroller-General; c) When giving evidence in any proceeding for an offence against this Part of this Act. Penalty: Fifty pounds.

Part III. Prevention of Dumping.

Interpretation. 16. In this Part of this Act: "Justice" means a Justice of the High Court; "The Comptroller-General" means the Comptroller-General of Customs; "Imported goods" and "Australian goods" include goods of those classes respectively, and all parts or ingredients thereof; "Produced" includes manufactured, and "producer" includes manufacturer; "Trade" includes production of every kind; "Industries" shall not include industries in which in the opinion of the Comptroller-General or Justice as the case may be, the majority of workers do not receive adequate remuneration or are subject to unfair terms or conditions of labour or employment.

Industries to which unfair competition refers. 17. Unfair competition has in all cases reference to competition with those Australian industries, the preservation of which, in the opinion of the Comptroller-General or a Justice as the case may be, is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers.

When competition deemed unfair. 18. 1. For the purposes of this Part of this Act, competition shall be deemed to be unfair, unless the contrary is proved, if: a) Under ordinary circumstances of trade it would probably lead to the Australian goods being no longer produced or being withdrawn from the market or being sold at a loss unless produced at an inadequate remuneration for labour; or b) The means adopted by the person importing or selling the imported goods are, in the opinion of the Comptroller-General or a Justice, as the case may be, unfair in the circumstances; or c) The competition would probably or does in fact result in an inadequate remuneration for labour in the Australian industry; or d) The competition would probably or does in fact result in creating any substantial disorganization in Australian industry or throwing workers out of employment; or e) The imported goods have been purchased abroad by or for the importer, from the manufacturer or some person acting for or in combination with him or accounting to him, at prices greatly below their ordinary cost of production where produced or market price where purchased; or f) The imported goods are imported by or for the manufacturer, or some person acting for or in combination with him or accounting to him, and are being sold in Australia at a price which is less than gives the person importing or selling them a fair profit upon their fair foreign market value, or their fair selling value if sold in the country of production, together with all charges after shipment from the place whence the goods are exported directly to Australia (including Customs duty). 2. In determining whether the competition is unfair, regard shall be had to the management, the processes, the plant, and the machinery employed or adopted in the Australian industry affected by the competition being reasonably efficient, effective, and up-to-date.

Certificate by Comptroller as to unfair competition. Matters required to be specified. Additional statements. Opportunity to show cause. Reference by Minister to Justice. 19. 1. The Comptroller General, whenever he has received a complaint in writing and has reason to believe that any person (hereinafter called the importer), either singly or in combination with any other person within or beyond the Commonwealth, is importing into Australia goods (hereinafter called imported goods) with intent to destroy or injure any Australian industry by their sale or disposal within the Commonwealth in unfair competition with any Australian goods, may certify to the Minister accordingly. 2. The certificate of the Comptroller-General shall specify: a) The imported goods; b) The Australian industry and goods; c) The importer; d) The grounds of unfairness in the competition; e) The name, address, and occupation of any person (not being an officer of the public service) upon whose information he may have acted. 3. The Comptroller-General may add to his certificate a statement of such other facts as in his opinion ought to be specified to give the importer fair notice of the matters complained of. 4. The Comptroller-General shall, before making his certificate, give to the importer an opportunity to show cause why the certificate should not be made and furnish him with a copy of the complaint. 5. On receipt of the certificate the Minister may: a) By order in writing refer to a Justice the investigation and determination of the question whether the imported goods are being imported with the intent alleged; and if so, whether the importation of the goods should be prohibited either absolutely or subject to any specified conditions or restrictions or limitations; b) Notify in the *Gazette* that the question has been so referred; and c) forward to the Justice a copy of the certificate.

Importation pending publication. 20. From the date of the *Gazette* notice until the publication in the *Gazette* of the determination of the question by the Justice, goods, the subject of the investigation, shall not be imported unless the importer: a) Gives to the Minister a bond with such sureties as the Minister approves, for such amount (not exceeding the true value of the goods for Customs purposes) as the Minister considers just and reasonable by way of precaution in the circumstances, and conditioned to be void if the Justice determines the question

in favour of the importer; or b) Gives such other security and complies with such other conditions as the Minister approves; and those goods shall, if imported in contravention of this section, be deemed to be prohibited imports within the meaning of the *Customs Act, 1901*, and the provisions of that Act shall apply to the goods accordingly.

Justice to investigate and determine. Power of Justice. Certificate *prima facie* evidence. Justice to decide according to conscience and merits. Determination final and conclusive. 21. 1. The Justice shall proceed to expeditiously and carefully investigate and determine the matter, and for the purpose of the proceeding shall have power to inquire as to any goods, things, and matters whatsoever which he considers pertinent, necessary, or material. 2. For the purpose of the proceeding the Justice shall sit in open Court, and shall have all the powers of a Justice in the exercise of the ordinary jurisdiction of the High Court.

He may, if he thinks fit, and shall on the application of either party, state a case for the opinion of the Full Court upon any question of law arising in the proceeding. And he may, if he thinks fit, at any stage of the proceeding, refer the investigation and determination of the matter to the Full Court, which shall in that case have all the powers and functions of a Justice under this Part of this Act.

3. The certificate of the Comptroller-General shall be *prima facie* evidence of facts by subsection (2) of section nineteen of this Act required to be specified therein.

4. In addition to the Comptroller-General and the importer the Justice may, if he thinks fit, allow any person interested in importing imported goods to be represented at the investigation. 5. The Justice shall be guided by good conscience and the substantial merits of the case, without regard to legal forms or technicalities, or whether the evidence before him is in accordance with the law of evidence or not. 6. No person shall in any proceeding before a Justice be excused from answering any question or producing documents on the ground that the answer or production may criminate or tend to criminate him, but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury. 7. The Justice shall forward his determination to the Minister. 8. In the case of the following agricultural implements: Ploughs of all kinds over 1½ cwt., tine harrows, disc harrows, grain drills, combined grain seed and manure drills, land rollers, cultivators, chaff cutters, seed cleaners, stripper harvesters, and any other implement usually used in agriculture, the Justice shall inquire into and determine the question whether the goods are being imported with the effect of benefiting the primary producers without unfairly injuring any other section of the community of the Commonwealth. 9. The determination of the Justice shall be final and conclusive and without appeal, and shall not be questioned in any way.

Action upon determination. Reduction of amount of bond. 22. 1. Upon the receipt of the determination of the Justice, the Minister shall forthwith cause it to be published in the *Gazette*. 2. If the Justice determines that the imported goods are being imported with the intent alleged, and that their importation should be prohibited either absolutely or subject to any specified conditions or restrictions or limitations of any kind whatsoever: a) The determination when so published shall have the effect of a proclamation under the *Customs Act, 1901*, prohibiting the importation of the goods either absolutely or subject to those conditions or restrictions or limitations as the case may be; and in that case the provisions of that Act shall apply to goods so prohibited; and b) The Justice may by order reduce the amount recoverable under any bond given in pursuance of this Part of this Act to such sum as the importer satisfies him is reasonable and just in the circumstances.

Power to rescind prohibition. 23. The Governor-General may at any time, by proclamation, simultaneously with or subsequently to any prohibition under this Part of this Act, rescind in whole or in part, the prohibition or any condition or restriction or limitation on importation imposed thereby.

Determination to be laid before Parliament. 24. In all cases of prohibition the determination of the Justice and any proclamation affecting the same shall be laid before both Houses of the Parliament within seven days after the publication in the *Gazette*, or, if the Parliament is not then sitting, within seven days after the next meeting of Parliament.

Rules of Court. 25. The Justices of the High Court, or a majority of them, may make Rules of Court, not inconsistent with this Act, for regulating the pro-

ceedings before a Justice under this Part of this Act, and for carrying this Part of this Act into effect.

Wilfully making false statement or misleading Comptroller-General. 26. 1. Any person who wilfully: a) Makes to the Comptroller-General or to any officer of Customs any false statement in relation to any action or proceedings taken or proposed to be taken under this Part of this Act; or b) Misleads the Comptroller-General in any particular likely to affect the discharge of his duty under this Act, shall be guilty of an offence. Penalty: One hundred pounds or twelve months' imprisonment. 2. Any person convicted under the last preceding subsection may be ordered by the Justice to whom a question is referred under this Part of this Act to pay the whole or part of the costs incurred by the importer in whose favour the question is determined.

b) No. 5 of 1908. An act to amend the Australian Industries Preservation Act, 1906 (14th April, 1908).

c) No. 26 of 1909. An act to amend the Australian Industries Preservation Acts 1906–1907 (13th December, 1909).

d) No. 29 of 1910. An Act to amend the Australian Industries Preservation Acts 1906–1909 (25th November, 1910).

[The amendments effected by Acts b, c, and d are incorporated in the principal Act.]

Marine Insurance Act, 1909.

No. 11 of 1909. An Act relating to Marine Insurance (11th November, 1909).¹⁾

Part I. Preliminary.

Short title and commencement. 1. This Act may be cited as the *Marine Insurance Act, 1909*, and shall commence on a day to be fixed by proclamation.

Parts. 2. This Act is divided into Parts as follows: Part I. Preliminary. Part II. Marine Insurance. Division 1. Limits of Marine Insurance; Division 2: Insurable Interest; Division 3: Insurable Value; Division 4: Disclosures and Representations; Division 5: The Policy; Division 6: Double Insurance; Division 7: Warrenties; Division 8: The Voyage. Part III. Assignment of Policy. Part IV. The Premium. Part V. Loss and Abandonment; Division 1: General; Division 2: Partial Losses (including Salvage, General Average, and Particular Charges); Part VI. Measure of Indemnity; Division 1: Liability of Insurer for Loss; Division 2: Rights of Insurer on Payment of Loss. Part VII. Return of Premium. Part VIII. Mutual Insurance. Part IX. Supplemental.

Interpretation. 3. In this Act, unless the contrary intention appears: "Action" includes counterclaim and set-off; "Freight" includes the profit derivable by a ship-owner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money; "Moveables" means any moveable tangible property, other than the ship, and includes money, valuable securities, and other documents; "Policy" means a marine policy. — E. § 90.

Saving of rules of common law. 4. The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall apply to contracts of marine insurance. — E. § 91 (2).

¹⁾ The references in the notes are to (E.) the Imperial *Marine Insurance Act, 1906*, (6 Edw. 7, c. 41).

Application of certain Imperial and State Acts. 5. The imperial Acts and State Acts set out in the first Schedule shall not to the extent therein specified apply to any contract or policy of marine insurance to which this Act applies. — E. § 92.

Application of Act. 6. 1. This Act shall apply to marine insurance, other than State marine insurance extending beyond the limits of the State concerned. 2. This Act does not apply to contracts of marine insurance made before the commencement of this Act.

Part II. Marine Insurance.

Division 1. Limits of marine insurance.

Marine insurance defined. 7. A contract of marine insurance is a contract whereby the insurer undertakes to indemnify the assured, in manner and to the extent thereby agreed, against marine losses, that is to say, the losses incident to marine adventure. — E. § 1.

Mixed sea and land risks. 8. 1. A contract of marine insurance may, by its express terms, or by usage of trade, be extended so as to protect the assured against losses on inland waters or on any land risk which may be incidental to any sea voyage. 2. Where a ship in course of building, or the launch of a ship, or any adventure analogous to a marine adventure, is covered by a policy in the form of a marine policy, the provisions of this Act, in so far as applicable, shall apply thereto; but, except as by this section provided, nothing in this Act shall alter or affect any rule of law applicable to any contract of insurance other than a contract of marine insurance as by this Act defined. — E. § 2.

Marine adventure and maritime perils defined. 9. 1. Subject to the provisions of this Act, every lawful marine adventure may be the subject of a contract of marine insurance. 2. In particular there is a marine adventure where: a) Any ship, goods, or other moveables are exposed to maritime perils. Such property is in this Act referred to as “insurable property”; b) The earning or acquisition of any freight, passage money, commission, profit, or other pecuniary benefit, or the security for any advances, loan, or disbursements, is endangered by the exposure of insurable property to maritime perils; c) Any liability to a third party may be incurred by the owner of, or other person interested in or responsible for, insurable property, by reason of maritime perils. “Maritime perils” means the perils consequent on, or incidental to, the navigation of the sea, that is to say, perils of the seas, fire, war perils, pirates, rovers, thieves, captures, seizures, restraints, and detentions of princes and peoples, jettisons, barratry, and any other perils, either of the like kind or which may be designated by the policy. — E. § 3.

Division 2. Insurable interest.

Avoidance of wagering or gaming contracts. 10. 1. Every contract of marine insurance by way of gaming or wagering is void. 2. A contract of marine insurance is deemed to be a gaming or wagering contract: a) Where the assured has not an insurable interest as defined by this Act, and the contract is entered into with no expectation of acquiring such an interest; or b) Where the policy is made “interest or no interest”, or “without further proof or interest than the policy itself”, or “without benefit of salvage to the insurer”, or subject to any other like term: Provided that where there is no possibility of salvage, a policy may be effected without benefit of salvage to the insurer. — E. § 4.

Insurable interest defined. 11. 1. Subject to the provisions of this Act, every person has an insurable interest who is interested in a marine adventure. 2. In particular a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss or by damage thereto, or by the detention thereof, or may incur liability in respect thereof. — E. § 5.

When interest must attach. 12. 1. The assured must be interested in the subject-matter insured at the time of the loss though he need not be interested when the insurance is effected. Provided that where the subject-matter is insured “lost or not lost,” the assured may recover although he may not have acquired his in-

terest until after the loss, unless at the time of effecting the contract of insurance the assured was aware of the loss, and the insurer was not. 2. Where the assured has no interest at the time of the loss, he cannot acquire interest by any act or election after he is aware of the loss. — E. § 6.

Defeasible or contingent interest. 13. 1. A defeasible interest is insurable, as also is a contingent interest. 2. In particular, where the buyer of goods has insured them, he has an insurable interest, notwithstanding that he might, at his election, have rejected the goods, or have treated them as at the seller's risk, by reason of the latter's delay in making delivery or otherwise. — E. § 7.

Partial interest. 14. A partial interest of any nature is insurable. — E. § 8.

Re-insurance. 15. 1. The insurer under a contract of marine insurance has an insurable interest in his risk, and may re-insure in respect of it. 2. Unless the policy otherwise provides, the original assured has no right or interest in respect of such re-insurance. — E. § 9.

Bottomry. 16. The lender of money on bottomry or respondentia has an insurable interest in respect of the loan. — E. § 10.

Master's and seamen's wages. 17. The master or any member of the crew of a ship has an insurable interest in respect of his wages. — E. § 11.

Advance freight. 18. In the case of advance freight, the person advancing the freight has an insurable interest, in so far as such freight is not repayable in case of loss. — E. § 12.

Charges of insurance. 19. The assured has an insurable interest in the charges of any insurance which he may effect. — E. § 13.

Quantum of interest. 20. 1. Where the subject-matter insured is mortgaged, the mortgagor has an insurable interest in the full value thereof, and the mortgagee has an insurable interest in respect of any sum due or to become due under the mortgage. 2. A mortgagee, consignee, or other person having an interest in the subject matter insured may insure on behalf and for the benefit of other persons interested as well as for his own benefit. 3. The owner of insurable property has an insurable interest in respect of the full value thereof, notwithstanding that some third person may have agreed, or be liable, to indemnify him in case of loss. — E. § 14.

Assignment of interest. 21. Where the assured assigns or otherwise parts with his interest in the subject-matter insured, he does not thereby transfer to the assignee his rights under the contract of insurance, unless there be an express or implied agreement with the assignee to that effect. But the provisions of this section do not affect a transmission of interest by operation of law. — E. § 15.

Division 3. Insurable value.

Measure of insurable value. 22. Subject to any express provision or valuation in the policy, the insurable value of the subject-matter insured must be ascertained as follows: a) In insurance on a ship, the insurable value is the value, at the commencement of the risk, of the ship, including her outfit, provisions and stores for the officers and crew, money advanced for seamen's wages, and other disbursements (if any) incurred to make the ship fit for the voyage or adventure contemplated by the policy, plus the charges of insurance upon the whole. The insurable value, in the case of a steamship, includes also the machinery, boilers, and coals and engine stores if owned by the assured, and in the case of a ship engaged in a special trade, the ordinary fittings requisite for that trade; b) In insurance on freight, whether paid in advance or otherwise, the insurable value is the gross amount of the freight at the risk of the assured, plus the charges of insurance; c) In insurance on goods or merchandise, the insurable value is the prime cost of the property insured, plus the expenses of and incidental to shipping and the charges of insurance upon the whole; d) In insurance on any other subject-matter, the insurable value is the amount at the risk of the assured when the policy attaches, plus the charges of insurance. — E. § 16;

Division 4. Disclosure and representations.

Insurance is uberrimae fidei. 23. A contract of marine insurance is a contract based upon the utmost good faith, and, if the utmost good faith be not observed by either party, the contract may be avoided by the other party. — E. § 17.

Disclosure by assured. 24. 1. Subject to the provisions of this section, the assured must disclose to the insurer, before the contract is concluded, every material circumstance which is known to the assured, and the assured is deemed to know every circumstance which, in the ordinary course of business, ought to be known by him. If the assured fails to make such disclosure, the insurer may avoid the contract. 2. Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk. 3. In the absence of inquiry the following circumstances need not be disclosed, namely: a) Any circumstance which diminishes the risk; b) Any circumstance which is known or presumed to be known to the insurer. The insurer is presumed to know matters of common notoriety or knowledge, and matters which an insurer in the ordinary course of his business, as such, ought to know; c) Any circumstance as to which information is waived by the insurer; d) Any circumstance which it is superfluous to disclose by reason of an express or implied warranty. 4. Whether any particular circumstance, which is not disclosed, be material or not is, in each case, a question of fact. 5. The term "circumstance" includes any communication made to, or information received by, the assured. — E. § 18.

Disclosure by agent effecting insurance. 25. Subject to the provisions of the preceding section as to circumstances which need not be disclosed, where an insurance is effected for the assured by an agent, the agent must disclose to the insurer: a) Every material circumstance which is known to himself, and an agent to insure is deemed to know every circumstance which in the ordinary course of business ought to be known by, or to have been communicated to, him; and b) Every material circumstance which the assured is bound to disclose, unless it come to his knowledge too late to communicate it to the agent. — E. § 19.

Representations pending negotiation of contract. 26. 1. Every material representation made by the assured or his agent to the insurer during the negotiations for the contract, and before the contract is concluded, must be true. If it be untrue the insurer may avoid the contract. 2. A representation is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether he will take the risk. 3. A representation may be either a representation as to a matter of fact, or as to a matter of expectation or belief. 4. A representation as to a matter of fact is true, if it be substantially correct, that is to say, if the difference between what is represented and what is actually correct would not be considered material by a prudent insurer. 5. A representation as to a matter of expectation or belief is true if it be made in good faith. 6. A representation may be withdrawn or corrected before the contract is concluded. 7. Whether a particular representation be material or not is, in each case, a question of fact. — E. § 20.

When contract is deemed to be concluded. 27. A contract of marine insurance is deemed to be concluded when the proposal of the assured is accepted by the insurer, whether the policy be then issued or not; and for the purpose of showing when the proposal was accepted, reference may be made to the slip or covering note or other customary memorandum of the contract. — E. § 21.

Division 5. The policy.

Contract must be embodied in policy. 28. Subject to the provisions of any Act, a contract of marine insurance is inadmissible in evidence in an action for the recovery of a loss under the contract unless it is embodied in a marine policy in accordance with this Act. The policy may be executed and issued either at the time when the contract is concluded, or afterwards. — E. § 22.

What policy must specify. 29. A marine policy must specify: a) The name of the assured, or of some person who effects the insurance on his behalf; b) The subject-matter insured and the risk insured against; c) The voyage, or period of time, or both, as the case may be, covered by the insurance; d) The sum or sums insured; e) The name or names of the insurers. — E. § 23.

Signature of insurer. 30. 1. A marine policy must be signed by or on behalf of the insurer, provided that in the case of a corporation the corporate seal may be sufficient, but nothing in this section shall be construed as requiring the subscription of a corporation to be under seal. 2. Where a policy is subscribed by or on behalf of two or more insurers, each subscription, unless the contrary be expressed, constitutes a distinct contract with the assured. — E. § 24.

Voyage and time policies. 31. 1. Where the contract is to insure the subject-matter at and from, or from one place to another place or to other places, the policy is called a "voyage policy," and where the contract is to insure the subject-matter for a definite period of time the policy is called a "time policy." A contract for both voyage and time may be included in the same policy. 2. A time policy which is made for any time exceeding twelve months is invalid: Provided that a time policy may contain an agreement to the effect, that in the event of the ship being at sea, or the voyage being otherwise not completed on the expiration of the policy, the subject-matter of the insurance shall be held covered until the arrival of the ship, at her destination, or for a reasonable time thereafter not exceeding thirty days, and the policy shall not be invalid on the ground only that by reason of such agreement it may become available for a period exceeding twelve months. — E. § 25.

Designation of subject-matter. 32. 1. The subject-matter insured must be designated in a marine policy with reasonable certainty. 2. The nature and extent of the interest of the assured in the subject-matter insured need not be specified in the policy. 3. Where the policy designates the subject-matter insured in general terms, it shall be construed to apply to the interest intended by the assured to be covered. 4. In the application of this section regard shall be had to any usage regulating the designation of the subject-matter insured. — E. § 26.

Valued policy. 33. 1. A policy may be either valued or unvalued. 2. A valued policy is a policy which specifies the agreed value of the subject-matter insured. 3. Subject to the provisions of this Act, and in the absence of fraud, the value fixed by the policy is, as between the insurer and assured, conclusive of the insurable value of the subject intended to be insured, whether the loss be total or partial. 4. Unless the policy otherwise provides, the value fixed by the policy is not conclusive for the purpose of determining whether there has been a constructive total loss. — E. § 27.

Unvalued policy. 34. An unvalued policy is a policy which does not specify the value of the subject-matter insured, but, subject to the limit of the sum insured, leaves the insurable value to be subsequently ascertained, in the manner hereinbefore specified. — E. § 28.

Floating policy by ship or ships. 35. 1. A floating policy is a policy which describes the insurance in general terms, and leaves the name of the ship or ships and other particulars to be defined by subsequent declaration. 2. The subsequent declaration or declarations may be made by indorsement on the policy, or in other customary manner. 3. Unless the policy otherwise provides, the declarations must be made in the order of dispatch or shipment. They must, in the case of goods, comprise all consignments within the terms of the policy, and the value of the goods or other property must be honestly stated, but an omission or erroneous declaration may be rectified even after loss or arrival, provided the omission or declaration was made in good faith. 4. Unless the policy otherwise provides, where a declaration of value is not made until after notice of loss or arrival, the policy must be treated as an unvalued policy as regards the subject-matter of that declaration. — E. § 29.

Construction of terms in policy. 36. 1. A policy may be in the form in the second Schedule. 2. Subject to the provisions of this Act, and unless the context of the policy otherwise requires, the terms and expressions mentioned in the second Schedule to this Act shall be construed as having the scope and meaning in that schedule assigned to them. — E. § 30.

Premium to be arranged. 37. 1. Where an insurance is effected at a premium to be arranged, and no arrangement is made, a reasonable premium is payable. 2. Where an insurance is effected on the terms that an additional premium is to be arranged in a given event, and that event happens but no arrangement is made, then a reasonable additional premium is payable. — E. § 31.

Division 6. Double insurance.

Double insurance. 38. 1. Where two or more policies are effected by or on behalf of the assured on the same adventure and interest or any part thereof, and the sums insured exceed the indemnity allowed by this Act, the assured is said to be over-insured by double insurance. 2. Where the assured is over-insured by double insurance: a) The assured, unless the policy otherwise provides, may

claim payment from the insurers in such order as he may think fit, provided that he is not entitled to receive any sum in excess of the indemnity allowed by this Act; b) Where the policy under which the assured claims is a valued policy, the assured must give credit as against the valuation for any sum received by him under any other policy, without regard to the actual value of the subject-matter insured; c) Where the policy under which the assured claims is an unvalued policy he must give credit, as against the full insurable value, for any sum received by him under any other policy; d) Where the assured receives any sum in excess of the indemnity allowed by this Act, he is deemed to hold such sum in trust for the insurers, according to their right of contribution among themselves. — E. § 32.

Division 7. Warranties.

Nature of warranty. 39. 1. A warranty, in the following sections relating to warranties, means a promissory warranty, that is to say, a warranty by which the assured undertakes that some particular thing shall or shall not be done, or that some condition shall be fulfilled, or whereby he affirms or negatives the existence of a particular state of facts. 2. A warranty may be express or implied. 3. A warranty, as above defined, is a condition which must be exactly complied with, whether it be material to the risk or not. If it be not so complied with, then, subject to any express provision in the policy, the insurer is discharged from liability as from the date of the breach of warranty, but without prejudice to any liability incurred by him before that date. — E. § 33.

When breach of warranty excused. 40. 1. Non-compliance with a warranty is excused when, by reason of a change of circumstances, the warranty ceases to be applicable to the circumstances of the contract, or when compliance with the warranty is rendered unlawful by any subsequent law. 2. Where a warranty is broken, the assured cannot avail himself of the defence that the breach has been remedied, and the warranty complied with, before loss. 3. A breach of warranty may be waived by the insurer. — E. § 34.

Express warranties. 41. 1. An express warranty may be in any form of words from which the intention to warrant is to be inferred. 2. An express warranty must be included in, or written upon, the policy, or must be contained in some document incorporated by reference into the policy. 3. An express warranty does not exclude an implied warranty, unless it be inconsistent therewith. — E. § 35.

Warranty of neutrality. 42. 1. Where insurable property, whether ship or goods, is expressly warranted neutral there is an implied condition that the property shall have a neutral character at the commencement of the risk, and that, so far as the assured can control the matter, its neutral character shall be preserved during the risk. 2. Where a ship is expressly warranted "neutral" there is also an implied condition that, so far as the assured can control the matter, she shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that she shall not falsify or suppress her papers, or use simulated papers. If any loss occurs through breach of this condition, the insurer may avoid the contract. — E. § 36.

No implied warranty of nationality. 43. There is no implied warranty as to the nationality of a ship or that her nationality shall not be changed during the risk. — E. § 37.

Warranty of good safety. 44. Where the subject-matter insured is warranted "well" or "in good safety" on a particular day, it is sufficient if it be safe at any time during that day. — E. § 38.

Warranty of seaworthiness of ship. 45. 1. In a voyage policy there is an implied warranty that at the commencement of the voyage the ship shall be seaworthy for the purpose of the particular adventure insured. 2. Where the policy attaches while the ship is in port, there is also an implied warranty that she shall, at the commencement of the risk, be reasonably fit to encounter the ordinary perils of the port. 3. Where the policy relates to a voyage which is performed in different stages, during which the ship requires different kinds of or further preparation or equipment, there is an implied warranty that at the commencement of each stage the ship is seaworthy in respect of such preparation or equipment for the purposes of that stage. 4. A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils of the seas of the adventure insured. 5. In a time policy there is no implied warranty that the

ship shall be seaworthy at any stage of the adventure, but where, with the privity of the assured, the ship is sent to sea in an unseaworthy state, the insurer is not liable for any loss attributable to unseaworthiness. — E. § 39.

No implied warranty that goods are seaworthy. 46. 1. In a policy on goods or other moveables there is no implied warranty that the goods or moveables are seaworthy. 2. In a voyage policy on goods or other moveables there is an implied warranty that at the commencement of the voyage the ship is not only seaworthy as a ship, but also that she is reasonably fit to carry the goods or other moveables to the destination contemplated by the policy. — E. § 40.

Warranty of legality. 47. There is an implied warranty that the adventure insured is a lawful one, and that, so far as the assured can control the matter, the adventure shall be carried out in a lawful manner. — E. § 41.

Division 8. The voyage.

Implied condition as to commencement of risk. 48. 1. Where the subject-matter is insured by a voyage policy "at and from" or "from" a particular place, it is not necessary that the ship should be at that place when the contract is concluded, but there is an implied condition that the adventure shall be commenced within a reasonable time, and that if the adventure be not so commenced the insurer may avoid the contract. 2. The implied condition may be negated by showing that the delay was caused by circumstances known to the insurer before the contract was concluded, or by showing that he waived the condition. — E. § 42.

Alteration of port of departure. 49. Where the place of departure is specified by the policy, and the ship instead of sailing from that place sails from any other place, the risk does not attach. — E. § 43.

Sailing for different destination. 50. Where the destination is specified in the policy, and the ship, instead of sailing for that destination, sails for any other destination, the risk does not attach. — E. § 44.

Change of voyage. 51. 1. Where, after the commencement of the risk, the destination of the ship is voluntarily changed from the destination contemplated by the policy, there is said to be a change of voyage. 2. Unless the policy otherwise provides, where there is a change of voyage, the insurer is discharged from liability as from the time of change, that is to say, as from the time when the determination to change it is manifested; and it is immaterial that the ship may not in fact have left the course of voyage contemplated by the policy when the loss occurs. — E. § 45.

Deviation. 52. 1. Where a ship, without lawful excuse, deviates from the voyage contemplated by the policy, the insurer is discharged from liability as from the time of deviation, and it is immaterial that the ship may have regained her route before any loss occurs. 2. There is a deviation from the voyage contemplated by the policy: a) Where the course of the voyage is specifically designated by the policy, and that course is departed from; or b) Where the course of the voyage is not specifically designated by the policy, but the usual and customary course is departed from. 3. The intention to deviate is immaterial; there must be a deviation in fact to discharge the insurer from his liability under the contract. — E. § 46.

Several ports of discharge. 53. 1. Where several ports of discharge are specified by the policy, the ship may proceed to all or any of them, but, in the absence of any usage or sufficient cause to the contrary, she must proceed to them, or such of them as she goes to, in the order designated by the policy. If she does not there is a deviation. 2. Where the policy is to "ports of discharge", within a given area, which are not named, the ship must, in the absence of any usage or sufficient cause to the contrary, proceed to them, or such of them as she goes to, in their geographical order. If she does not there is a deviation. — E. § 47.

Delay in voyage. 54. In the case of a voyage policy, the adventure insured must be prosecuted throughout its course with reasonable dispatch, and, if without lawful excuse it is not so prosecuted, the insurer is discharged from liability as from the time when the delay became unreasonable. — E. § 48.

Excuses for deviation or delay. 55. 1. Deviation or delay in prosecuting the voyage contemplated by the policy is excused: a) Where authorised by any special term in the policy; or b) Where caused by circumstances beyond the control of the master and his employer; or c) Where reasonably necessary in order to

comply with an express or implied warranty; or d) Where reasonably necessary for the safety of the ship or subject-matter insured; or e) For the purpose of saving human life, or aiding a ship in distress where human life may be in danger; or f) Where reasonably necessary for the purpose of obtaining medical or surgical aid for any person on board the ship; or g) Where caused by the barratrous conduct of the master or crew, if barratry be one of the perils insured against. 2. When the cause excusing the deviation or delay ceases to operate, the ship must resume her course, and prosecute her voyage, with reasonable dispatch. — E. § 49.

Part III. Assignment of Policy.

When and how policy is assignable. 56. 1. A marine policy is assignable unless it contains terms expressly prohibiting assignment. It may be assigned either before or after loss. 2. Where a marine policy has been assigned so as to pass the beneficial interest in the policy, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected. 3. A marine policy may be assigned by endorsement thereon, or in other customary manner. — E. § 50.

Assured who has no interest cannot assign. 57. Where the assured has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative: Provided that nothing in this section affects the assignment of a policy after loss. — E. § 51.

Part IV. The Premium.

When premium payable. 58. Unless otherwise agreed, the duty of the assured or his agent to pay the premium, and the duty of the insurer to issue the policy to the assured or his agent, are concurrent conditions, and the insurer is not bound to issue the policy until payment or tender of the premium. — E. § 52.

Policy effected through broker. 59. 1. Unless otherwise agreed, where a marine policy is effected on behalf of the assured by a broker, the broker is directly responsible to the insurer for the premium, and the insurer is directly responsible to the assured for the amount which may be payable in respect of losses, or in respect of returnable premium. 2. Unless otherwise agreed, the broker has, as against the assured, a lien upon the policy for the amount of the premium and his charges in respect of effecting the policy; and, where he has dealt with the person who employs him as a principal, he has also a lien on the policy in respect of any balance on any insurance account which may be due to him from such person, unless when the debt was incurred he had reason to believe that such person was only an agent. — E. § 53.

Effect of receipt on policy. 60. Where a marine policy effected on behalf of the assured by a broker acknowledges the receipt of the premium, such acknowledgment is, in the absence of fraud, conclusive as between the insurer and the assured, but not as between the insurer and broker. — E. § 54.

Part V. Loss and Abandonment.

Division 1. General.

Included and excluded losses. 61. 1. Subject to the provisions of this Act, and unless the policy otherwise provides, the insurer is liable for any loss proximately caused by a peril insured against, but, subject as aforesaid, he is not liable for any loss which is not proximately caused by a peril insured against. 2. In particular: a) The insurer is not liable for any loss attributable to the wilful misconduct of the assured, but, unless the policy otherwise provides, he is liable for any loss proximately caused by a peril insured against, even though the loss would not have happened but for the misconduct or negligence of the master or crew; b) Unless the policy otherwise provides, the insurer on ship or goods is not liable for any loss proximately caused by delay, although the delay be caused by a peril insured against; c) Unless the policy otherwise provides, the insurer is not liable for ordinary wear and tear, ordinary leakage and breakage, inherent vice or nature of the subject-matter insured, or for any loss proximately caused by

rats or vermin, or for any injury to machinery not proximately caused by maritime perils. — E. § 55.

Partial and total loss. 62. 1. A loss may be either total or partial. Any loss other than a total loss, as hereinafter, defined, is a partial loss. 2. A total loss may be either an actual total loss or a constructive total loss. 3. Unless a different intention appears from the terms of the policy, an insurance against total loss includes a constructive, as well as an actual, total loss. 4. Where the assured brings an action for a total loss and the evidence proves only a partial loss, he may, unless the policy otherwise provides, recover for a partial loss. 5. Where goods reach their destination in specie, but by reason of obliteration of marks, or otherwise, they are incapable of identification, the loss, if any, is partial, and not total. — E. § 56.

Actual total loss. 63. 1. Where the subject-matter insured is destroyed, or so damaged as to cease to be a thing of the kind insured, or where the assured is irretrievably deprived thereof, there is an actual total loss. 2. In the case of an actual total loss no notice of abandonment need be given. — E. § 57.

Missing ship. 64. Where the ship concerned in the adventure is missing, and after the lapse of a reasonable time no news of her has been received, an actual total loss may be presumed. — E. § 58.

Effect of transshipment, etc. 65. Where, by a peril insured against, the voyage is interrupted at an intermediate port or place, under such circumstances as, apart from any special stipulation in the contract of affreightment, to justify the master in landing, and reshipping the goods or other moveables, or in transshipping them, and sending them on to their destination, the liability of the insurer continues, notwithstanding the landing or transshipment. — E. § 59.

Constructive total loss defined. 66. 1. Subject to any express provision in the policy, there is a constructive total loss where the subject-matter insured is reasonably abandoned on account of its actual total loss appearing to be unavoidable, or because it could not be preserved from actual total loss without an expenditure which would exceed its value when the expenditure had been incurred. 2. In particular, there is a constructive total loss: a) Where the assured is deprived of the possession of his ship or goods by a peril insured against, and i) it is unlikely that he can recover the ship or goods, as the case may be; or ii) the cost of recovering the ship or goods, as the case may be, would exceed their value when recovered; or b) In the case of damage to a ship, where she is so damaged by a peril insured against that the cost of repairing the damage would exceed the value of the ship when repaired. In estimating the cost of repairs, no deduction is to be made in respect of general average contributions to those repairs payable by other interests, but account is to be taken of the expense of future salvage operations and of any future general average contributions to which the ship would be liable if repaired; or c) In the case of damage to goods, where the cost of repairing the damage and forwarding the goods to their destination would exceed their value on arrival. — E. § 60.

Effect of constructive total loss. 67. Where there is a constructive total loss the assured may either treat the loss as a partial loss, or abandon the subject-matter insured to the insurer and treat the loss as if it were an actual total loss. — E. § 61.

Notice of abandonment. 68. 1. Subject to the provisions of this section, where the assured elects to abandon the subject-matter insured to the insurer, he must give notice of abandonment. If he fails to do so the loss can only be treated as a partial loss. 2. Notice of abandonment may be given in writing, or by word of mouth, or partly in writing and partly by word of mouth, and may be given in any terms which indicate the intention of the assured to abandon his insured interest in the subject-matter insured unconditionally to the insurer. 3. Notice of abandonment must be given with reasonable diligence after receipt of reliable information of the loss, but where the information is of a doubtful character the assured is entitled to a reasonable time to make inquiry. 4. Where notice of abandonment is properly given, the rights of the assured are not prejudiced by the fact that the insurer refuses to accept the abandonment. 5. The acceptance of an abandonment may be either express or implied from the conduct of the insurer. The mere silence of the insurer after notice is not an acceptance. 6. Where notice of abandonment is accepted the abandonment is irrevocable. The acceptance of the notice conclusively admits liability for the loss and the sufficiency of the notice. 7. Notice of abandonment is unnecessary where, at the time when the assured re-

ceives information of the loss, there would be no possibility of benefit to the insurer if notice were given to him. 8. Notice of abandonment may be waived by the insurer. 9. Where an insurer has re-insured his risk, no notice of abandonment need be given by him. — E. § 62.

Effect of abandonment. 69. 1. Where there is a valid abandonment the insurer is entitled to take over the interest of the assured in whatever may remain of the subject-matter insured, and all proprietary rights incidental thereto. 2. Upon the abandonment of a ship, the insurer thereof is entitled to any freight in course of being earned, and which is earned by her subsequent to the casualty causing the loss, less the expenses of earning it incurred after the casualty; and, where the ship is carrying the owner's goods, the insurer is entitled to a reasonable remuneration for the carriage of them subsequent to the casualty causing the loss. — E. § 63.

Division 2. Partial losses (including salvage and general average and particular charges).

Particular average loss. 70. 1. A particular average loss is a partial loss of the subject-matter insured, caused by a peril insured against, and which is not a general average loss. 2. Expenses incurred by or on behalf of the assured for the safety or preservation of the subject-matter insured, other than general average and salvage charges, are called particular charges. Particular charges are not included in particular average. — E. § 64.

Salvage charges. 71. 1. Subject to any express provision in the policy, salvage charges incurred in preventing a loss by perils insured against may be recovered as a loss by those perils. 2. "Salvage charges" means the charges recoverable under maritime law by a salvor independently of contract. They do not include the expenses of services in the nature of salvage rendered by the assured or his agents, or any person employed for hire by them, for the purpose of averting a peril insured against. Such expenses, where properly incurred, may be recovered as particular charges or as a general average loss, according to the circumstances under which they were incurred. — E. § 65.

General average loss. 72. 1. A general average loss is a loss caused by or directly consequential on a general average act. It includes a general average expenditure as well as a general average sacrifice. 2. There is a general average act where any extraordinary sacrifice or expenditure is voluntarily and reasonably made or incurred in time of peril for the purpose of preserving the property imperilled in the common adventure. 3. Where there is a general average loss, the party on whom it falls is entitled, subject to the conditions imposed by maritime law, to a rateable contribution from the other parties interested, and such contribution is called a general average contribution. 4. Subject to any express provision in the policy, where the assured has incurred a general average expenditure, he may recover from the insurer in respect of the proportion of the loss which falls upon him; and, in the case of a general average sacrifice, he may recover from the insurer in respect of the whole loss without having enforced his right of contribution from the other parties liable to contribute. 5. Subject to any express provision in the policy, where the assured has paid, or is liable to pay, a general average contribution in respect of the subject insured, he may recover therefor from the insurer. 6. In the absence of express stipulation, the insurer is not liable for any general average loss or contribution where the loss was not incurred for the purpose of avoiding, or in connection with the avoidance of, a peril insured against. 7. Where ship, freight, and cargo, or any two of those interests, are owned by the same assured, the liability of the insurer in respect of general average losses or contributions is to be determined as if those subjects were owned by different persons. — E. § 66.

Part VI. Measure of indemnity.

Division 1. Liability of insurer for loss.

Extent of liability of insurer for loss. 73. 1. The sum which the assured can recover in respect of a loss on a policy by which he is insured, in the case of an unvalued policy to the full extent of the insurable value, or, in the case of a valued policy to the full extent of the value fixed by the policy, is called the measure of indemnity. 2. Where there is a loss recoverable under the policy, the insurer, or each insurer if there be more than one, is liable for such proportion

of the measure of indemnity as the amount of his subscription bears to the value fixed by the policy in the case of a valued policy, or to the insurable value in the case of an unvalued policy. — E. § 67.

Total loss. 74. Subject to the provisions of this Act and to any express provision in the policy, where there is a total loss of the subject-matter insured: a) If the policy be a valued policy, the measure of indemnity is the sum fixed by the policy; b) If the policy be an unvalued policy, the measure of indemnity is the insurable value of the subject-matter insured. — E. § 68.

Partial loss of ship. 75. Where a ship is damaged, but is not totally lost, the measure of indemnity, subject to any express provision in the policy, is as follows: a) Where the ship has been repaired, the assured is entitled to the reasonable cost of the repairs, less the customary deductions, but not exceeding the sum insured in respect of any one casualty; b) Where the ship has been only partially repaired, the assured is entitled to the reasonable cost of such repairs, computed as above, and also to be indemnified for the reasonable depreciation, if any, arising from the unrepaired damage, provided that the aggregate amount shall not exceed the cost of repairing the whole damage, computed as above; c) Where the ship has not been repaired, and has not been sold in her damaged state during the risk, the assured is entitled to be indemnified for the reasonable depreciation arising from the unrepaired damage, but not exceeding the reasonable cost of repairing such damage, computed as above. — E. § 69.

Partial loss of freight. 76. Subject to any express provision in the policy, where there is a partial loss of freight, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the proportion of freight lost by the assured bears to the whole freight at the risk of the assured under the policy. — E. § 70.

Partial loss of goods, merchandise, etc. 77. Where there is a partial loss of goods, merchandise, or other moveables, the measure of indemnity, subject to any express provision in the policy, is as follows: a) Where part of the goods, merchandise, or other moveables insured by a valued policy is totally lost, the measure of indemnity is such proportion of the sum fixed by the policy as the insurable value of the part lost bears to the insurable value of the whole, ascertained as in the case of an unvalued policy; b) Where part of the goods, merchandise, or other moveables insured by an unvalued policy is totally lost, the measure of indemnity is the insurable value of the part lost, ascertained as in case of total loss; c) Where the whole or any part of the goods or merchandise insured has been delivered damaged at its destination, the measure of indemnity is such proportion of the sum fixed by the policy in the case of a valued policy, or of the insurable value in the case of an unvalued policy, as the difference between the gross sound and damaged values at the place of arrival bears to the gross sound value; d) "Gross value" means the wholesale price or, if there be no such price, the estimated value, with, in either case, freight, landing charges, and duty paid beforehand; provided that, in the case of goods or merchandise customarily sold in bond, the bonded price is deemed to be the gross value. "Gross proceeds" means the actual price obtained at a sale where all charges on sale are paid by the sellers. — E. § 71.

Apportionment of valuation. 78. 1. Where different species of property are insured under a single valuation, the valuation must be apportioned over the different species in proportion to their respective insurable values, as in the case of an unvalued policy. The insured value of any part of a species is such proportion of the total insured value of the species as the insurable value of the part bears to the insurable value of the whole, ascertained in both cases as provided by this Act. **2.** Where a valuation has to be apportioned, and particulars of the prime cost of each separate species, quality, or description of goods cannot be ascertained, the division of the valuation may be made over the net arrived sound values of the different species, qualities, or descriptions of goods. — E. § 72.

General average contributions and salvage charges. 79. 1. Subject to any express provision in the policy, where the assured has paid, or is liable for, any general average contribution, the measure of indemnity is the full amount of such contribution, if the subject-matter liable to contribution is insured for its full contributory value; but, if such subject-matter be not insured for its full contributory value, or if only part of it be insured, the indemnity payable by the insurer must be

reduced in proportion to the under insurance, and where there has been a particular average loss which constitutes a deduction from the contributory value, and for which the insurer is liable, that amount must be deducted from the insured value in order to ascertain what the insurer is liable to contribute. 2. Where the insurer is liable for salvage charges the extent of his liability must be determined on the like principle. — E. § 73.

Liabilities to third parties. 80. Where the assured has effected an insurance in express terms against any liability to a third party, the measure of indemnity, subject to any express provision in the policy, is the amount paid or payable by him to such third party in respect of such liability. — E. § 74.

General provisions as to measure of indemnity. 81. 1. Where there has been a loss in respect of any subject-matter not expressly provided for in the foregoing provisions of this Act, the measure of indemnity shall be ascertained, as nearly as may be, in accordance with those provisions, in so far as applicable to the particular case. 2. Nothing in the provisions of this Act relating to the measure of indemnity shall affect the rules relating to double insurance, or prohibit the insurer from disproving interest wholly or in part, or from showing that at the time of the loss the whole or any part of the subject-matter insured was not at risk under the policy. — E. § 75.

Particular average warranties. 82. 1. Where the subject-matter insured is warranted free from particular average, the assured cannot recover for a loss of part, other than a loss incurred by a general average sacrifice, unless the contract contained in the policy be apportionable; but, if the contract be apportionable, the assured may recover for a total loss of any apportionable part. 2. Where the subject-matter insured is warranted free from particular average, either wholly or under a certain percentage, the insurer is nevertheless liable for salvage charges, and for particular charges and other expenses properly incurred pursuant to the provisions of the suing and labouring clause in order to avert a loss insured against. 3. Unless the policy otherwise provides, where the subject-matter insured is warranted free from particular average under a specified percentage, a general average loss cannot be added to a particular average loss to make up the specified percentage. 4. For the purpose of ascertaining whether the specified percentage has been reached, regard shall be had only to the actual loss suffered by the subject-matter insured. Particular charges and the expenses of and incidental to ascertaining and proving the loss must be excluded. — E. § 76.

Successive losses. 83. 1. Unless the policy otherwise provides and subject to the provisions of this Act, the insurer is liable for successive losses, even though the total amount of such losses may exceed the sum insured. 2. Where, under the same policy, a partial loss, which has not been repaired or otherwise made good, is followed by a total loss, the assured can only recover in respect of the total loss: Provided that nothing in this section shall affect the liability of the insurer under the suing and labouring clause. — E. § 77.

Suing and labouring clause. 84. 1. Where the policy contains a suing and labouring clause, the engagement thereby entered into is deemed to be supplementary to the contract of insurance, and the assured may recover from the insurer any expenses properly incurred pursuant to the clause, notwithstanding that the insurer may have paid for a total loss, or that the subject-matter may have been warranted free from particular average, either wholly or under a certain percentage. 2. General average losses and contributions and salvage charges, as defined by this Act, are not recoverable under the suing and labouring clause. 3. Expenses incurred for the purpose of averting or diminishing any loss not covered by the policy are not recoverable under the suing and labouring clause. 4. It is the duty of the assured and his agents, in all cases, to take such measures as may be reasonable for the purpose of averting or minimising a loss. — E. § 78.

Division 2. Rights of insurer on payment of loss.

Right of subrogation. 85. 1. Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss. 2. Sub-

ject to the foregoing provisions, where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the assured in and in respect of the subject-matter insured as from the time of the casualty causing the loss, in so far as the assured has been indemnified, according to this Act, by such payment for the loss. — E. § 79.

Right of contribution. 86. 1. Where the assured is over-insured by double insurance, each insurer is bound, as between himself and the other insurers, to contribute rateably to the loss in proportion to the amount for which he is liable under his contract. 2. If any insurer pays more than his proportion of the loss, he is entitled to maintain an action for contribution against the other insurers, and is entitled to the like remedies as a surety who has paid more than his proportion of the debt. — E. § 80.

Effect of under insurance. 87. Where the assured is insured for an amount less than the insurable value or, in the case of a valued policy, for an amount less than the policy valuation, he is deemed to be his own insurer in respect of the uninsured balance. — E. § 81.

Part VII. Return of Premium.

Enforcement of return. 88. Where the premium, or a proportionate part thereof is, by this Act, declared to be returnable: a) If already paid, it may be recovered by the assured from the insurer; and b) If unpaid, it may be retained by the assured or his agent. — E. § 82.

Return by agreement. 89. Where the policy contains a stipulation for the return of the premium, or a proportionate part thereof, on the happening of a certain event, and that event happens, the premium, or, as the case may be, the proportionate part thereof, is thereupon returnable to the assured. — E. § 83.

Return for failure of consideration. 90. 1. Where the consideration for the payment of the premium totally fails, and there has been no fraud or illegality on the part of the assured or his agents, the premium is thereupon returnable to the assured. 2. Where the consideration for the payment of the premium is apportionable, and there is a total failure of any apportionable part of the consideration, a proportionate part of the premium is, under the like conditions, thereupon returnable to the assured. 3. In particular: a) Where the policy is void, or is avoided by the insurer as from the commencement of the risk, the premium is returnable, provided that there has been no fraud or illegality on the part of the assured; but if the risk is not apportionable, and has once attached, the premium is not returnable; b) Where the subject-matter insured, or part thereof, has never been imperilled, the premium, or, as the case may be, a proportionate part thereof, is returnable: Provided that where the subject-matter has been insured "lost or not lost" and has arrived in safety at the time when the contract is concluded, the premium is not returnable unless, at such time, the insurer knew of the safe arrival; c) Where the assured has no insurable interest throughout the currency of the risk, the premium is returnable, provided that this rule does not apply to a policy effected by way of gaming or wagering; d) Where the assured has a defeasible interest which is terminated during the currency of the risk, the premium is not returnable; e) Where the assured has over-insured under an unvalued policy, a proportionate part of the premium is returnable; f) Subject to the foregoing provisions, where the assured has over-insured by double insurance, a proportionate part of the several premiums is returnable: Provided that, if the policies are effected at different times, and any earlier policy has at any time borne the entire risk, or if a claim has been paid on the policy in respect of the full sum insured thereby, no premium is returnable in respect of that policy, and when the double insurance is effected knowingly by the assured no premium is returnable. — E. § 84.

Part VIII. Mutual insurance.

Modification of Act in case of mutual insurance. 91. 1. Where two or more persons mutually agree to insure each other against marine losses there is said to be a mutual insurance. 2. The provisions of this Act relating to the premium do not apply to mutual insurance, but a guarantee, or such other arrangement as may be agreed upon, may be substituted for the premium. 3. The provisions of this Act, in so far as they may be modified by the agreement of the parties, may in

the case of mutual insurance be modified by the terms of the policies issued by the association, or by the rules and regulations of the association. 4. Subject to the exceptions mentioned in this section, the provisions of this Act apply to a mutual insurance. — E. § 85.

Part IX. Supplemental.

Ratification by assured. 92. Where a contract of marine insurance is in good faith effected by one person on behalf of another, the person on whose behalf it is effected may ratify the contract even after he is aware of a loss. — E. § 86;

Implied obligations varied by agreement or usage. 93. 1. Where any right, duty, or liability would arise under a contract of marine insurance by implication of law, it may be negatived or varied by express agreement, or by usage, if the usage be such as to bind both parties to the contract. 2. The provisions of this section extend to any right, duty, or liability declared by this Act which may be lawfully modified by agreement. — E. § 87.

Reasonable time, etc., a question of fact. 94. Where by this Act any reference is made to reasonable time, reasonable premium, or reasonable diligence, the question what is reasonable is a question of fact. — E. § 88.

Reference to slip or cover note. 95. Where a policy in accordance with this Act has been issued, nothing in this Act shall prevent reference being made in legal proceedings to the slip or covering note, or other customary memorandum of a contract of marine insurance. — E. § 89.

Schedules.

The First Schedule.

Imperial Acts.

Session and Chapter.	Title or Short Title.	Extent.
19 Geo. 2, ch. 37.	An Act to regulate insurance on ships belonging to the subjects of Great Britain, and on merchandises or effects laden thereon.	The whole.
28 Geo. 3, ch. 56.	An Act to repeal an Act made in the twentyfifth year of the reign of His present Majesty, intituled "An Act for regulating insurance on ships, and on goods, merchandises, or effects", and for substituting other provisions for the like purpose in lieu thereof.	The whole so far as it relates to Marine Insurance.

State Acts.

Short Title and Number.	State.	Extent.
<i>Life, Fire, and Marine Insurance Act, 1902, No. 49.</i>	New South Wales	Section 17.
<i>The Instruments Act 1890, No. 1103.</i>	Victoria	Part III, Division 1.
<i>Prohibition to Re-Assurances Repeal Act 1867, No. 4.</i>	South Australia	The whole.
<i>The Marine Insurance Act 1907, No. 33.</i>	Western Australia	The whole.
<i>The Policies of Marine Assurance Act 1869, No. 10.</i>	Tasmania	The whole.

The Second Schedule.

Form of Policy.

Be it known that _____ as well in _____ own name as for
and in the name and names of all and every other person or persons to whom the same doth,
may, or shall appertain, in part or in all doth make assurance and cause
and them, and every of them, to be insured lost or not
lost, at and from _____
Upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance,

munition, artillery, boat, and other, furniture, of and in the good ship or vessel called the
 whereof is master under God, for this present voyage,
 or whosoever else shall go for master in the said ship, or by
 whatsoever other name or names the said ship, or the master thereof, is or shall be named or
 called; beginning the adventure upon the said goods and merchandises from the loading
 thereof aboard the said ship
 upon the said ship, &c.
 and so shall continue and endure, during her abode there, upon the said ship, &c.,
 and further, until the said ship, with all her ordnance, tackle, apparel, &c.,
 and goods and merchandises whatsoever shall be arrived at
 upon the said ship, &c., until she hath moored at anchor twenty-four hours in good safety; and
 upon the goods and merchandises, until the same be there discharged and safely landed. And
 it shall be lawful for the said ship, &c., in this voyage, to proceed and sail to and stay at any
 ports or places whatsoever
 without prejudice to this insurance. The said ship, &c., goods and merchandises, &c., for so
 much as concerns the assured by agreement between the assured and assurers in this policy, are
 and shall be valued at

Touching the adventures and perils which we the assurers are contented to bear and do
 take upon us in this voyage: they are of the seas, men of war, fire, enemies, pirates, rovers, thie-
 ves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints,
 and detentions of all kings, princes, and people, of what nation, condition, or quality soever,
 barratry of the master and mariners, and of all other perils, losses, and misfortunes, that have
 or shall come to the hurt, detriment, or damage of the said goods, and merchandises, and ship,
 &c., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured,
 their factors, servants and assigns, to sue, labour, and travel for, in and about the defence,
 safeguards, and recovery of the said goods and merchandises, and ship, &c., or any part thereof,
 without prejudice to this insurance; to the charges whereof we, the assurers, will contribute
 each one according to the rate and quantity of his sum herein assured. And it is especially de-
 clared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the
 property insured shall be considered as a waiver, or acceptance of abandonment. And it is
 agreed by us, the insurers, that this writing or policy of assurance heretofore made in Lombard-
 street, or in the Royal Exchange, or elsewhere in London. And so we, the assurers, are content-
 ed, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors,
 and goods to the assured, their executors, administrators, and assigns, for the true performance
 of the premises, confessing ourselves paid the consideration due unto us for this assurance by the
 assured, at and after the rate of

In witness whereof we, the assurers, have subscribed our names and sums assured in London.

N. B.—Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general,
 or the ship be stranded—sugar, tobacco, hemp, flax, hides and skins are warranted free from
 average, under Five pounds per cent., and all other goods also the ship and freight, are war-
 ranted free from average, under three pounds per cent., unless general, or the ship be stranded.

Rules for Construction of Policy.

The following are the rules referred to by this Act for the construction of a policy in the
 above or other like form, where the context does not otherwise require:

1. Where the subject-matter is insured "lost or not lost", and the loss has occurred before
 the contract is concluded, the risk attaches, unless, at such time the assured was aware of the
 loss, and the insurer was not.

2. Where the subject-matter is insured "from" a particular place the risk does not attach
 until the ship starts on the voyage insured.

3. a) Where a ship is insured "at and from" a particular place, and she is at that place
 in good safety when the contract is concluded, the risk attaches immediately; b) If she be
 not at that place when the contract is concluded the risk attaches as soon as she arrives there
 in good safety, and, unless the policy otherwise provides, it is immaterial that she is covered
 by another policy for a specified time after arrival; c) Where chartered freight is insured "at
 and from" a particular place, and the ship is at that place in good safety when the contract is
 concluded, the risk attaches immediately. If she be not there when the contract is concluded
 the risk attaches as soon as she arrives there in good safety; d) Where freight, other than
 chartered freight is payable without special conditions and is insured "at and from" a par-
 ticular place, the risk attaches *pro rata* as the goods or merchandise are shipped; provided
 that if there be cargo in readiness which belongs to the shipowner, or which some other person
 has contracted with him to ship, the risk attaches as soon as the ship is ready to receive
 such cargo.

4. Where goods or other moveables are insured "from the loading thereof", the risk does
 not attach until such goods or moveables are actually on board, and the insurer is not liable
 for them while in transit from the shore to the ship.

5. Where the risk on goods or other moveables continues until they are "safely landed",
 they must be landed in the customary manner and within a reasonable time after arrival at
 the port of discharge, and if they are not so landed the risk ceases.

6. In the absence of any further license or usage, the liberty to touch and stay "at any port or place whatsoever" does not authorise the ship to depart from the course of her voyage from the port of departure to the port of destination.

7. The term "perils of the seas" refers only to fortuitous accidents or casualties of the seas. It does not include the ordinary action of the winds and waves.

8. The term "pirates" includes passengers who mutiny and rioters who attack the ship from the shore.

9. The term "thieves" does not cover clandestine theft or a theft committed by any one of the ship's company, whether crew or passengers.

10. The term "arrests, etc., of kings, princes, and people," refers to political or executive acts, and does not include a loss caused by riot or by ordinary judicial process.

11. The term "barratry" includes every wrongful act wilfully committed by the master or crew to the prejudice of the owner, or, as the case may be, the charterer.

12. The term "all other perils" includes only perils similar in kind to the perils specifically mentioned in the policy.

13. The term "average unless general" means a partial loss of the subject-matter insured other than a general average loss, and does not include "particular charges."

14. Where the ship has stranded, the insurer is liable for the excepted losses, although the loss is not attributable to the stranding, provided that when the stranding takes place the risk has attached and, if the policy be on goods, that the damaged goods are on board.

15. The term "ship" includes the hull, materials and outfit, stores and provisions for the officers and crew, and, in the case of vessels engaged in a special trade, the ordinary fittings requisite for the trade, and also, in the case of a steamship, the machinery, boilers and coals and engines stores, if owned by the assured.

16. The term "freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or moveables, as well as freight payable by a third party, but does not include passage money.

17. The term "goods" means goods in the nature of merchandise, and does not include personal effects or provisions and stores for use on board.

In the absence of any usage to the contrary, deck cargo and living animals must be insured specifically, and not under the general denomination of goods.

Bills of Exchange.¹⁾

No. 27 of 1909. An Act relating to Bills of Exchange, Cheques, and Promissory Notes (13th December, 1909).

Part I. Preliminary.

Short title. 1. This Act may be cited as the *Bills of Exchange Act, 1909*. — E. § 1.

Commencement. 2. This Act shall commence on a day to be fixed by proclamation.

Parts. 3. This Act is divided into parts as follows: Part I: Preliminary. Part II: Bills of Exchange: Division 1: Form and Interpretation; Division 2: Capacity and Authority of Parties; Division 3: The Consideration for a Bill; Division 4: Negotiation of Bills; Division 5: General Duties of the Holder; Division 6: Liabilities of Parties; Division 7: Discharge of Bill; Division 8: Acceptance and Payment for Honour; Division 9: Lost Instruments; Division 10: Bills in a Set; Division 11: Conflict of Laws. Part III: Cheques on a Banker: Division 1: Cheques generally; Division 2: Crossed Cheques. Part IV: Promissory Notes. Part V: Supplementary.

Interpretation of terms. 4. In this Act, unless the context otherwise requires, "Acceptance" means an acceptance completed by delivery or notification. "Action" includes counterclaim, and set-off. "Australasia" means Australia and any Territory under the control of the Commonwealth, New Zealand, and the Fiji Islands. "Banker" includes a body of persons, whether incorporated or not, who carry on the business of banking. "Bankrupt" means any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy or insolvency. "Bearer" means the person in possession of a bill or note which is payable to bearer. "Bill" means bill of exchange. "Delivery" means transfer of possession, actual or constructive, from one person to another. "Holder"

¹⁾ The references in the notes, are to (E.) the Imperial *Bills of Exchange Act, 1882*, (45 & 46 Vict. c. 61).

means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof. "Indorsement" means an indorsement completed by delivery, "Issue" means the first delivery of a bill or note, complete in form, to a person who takes it as a holder. "Note" means promissory note. "Person" includes a body of persons whether incorporated or not. "Value" means valuable consideration. "Written" includes printed, and "writing" includes print. — E. § 2.

Application of rules of bankruptcy and common law. 5. 1. The rules in bankruptcy relating to bills of exchange, cheques, and promissory notes, shall continue to apply thereto notwithstanding anything in this Act contained. 2. The rules of common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to bills of exchange, cheques, and promissory notes. — E. § 97.

Application of Act. 6. This Act does not apply to bills of exchange, cheques, and promissory notes drawn issued or made before the commencement of this Act.

Application of State laws. 7. The State Acts set out in the first Schedule shall, to the extent specified in that Schedule, cease to apply to bills of exchange, cheques, and promissory notes drawn or made after the commencement of this Act.

Part II. Bills of Exchange.

Division 1. Form and interpretation.

Bill of exchange defined. 8. 1. A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer. 2. An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange. 3. An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with: a) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount, or b) A statement of the transaction which gives rise to the bill, is unconditional. 4. A bill is not invalid by reason: a) That it is not dated; b) That it does not specify the value given, or that any value has been given therefor or; c) That it does not specify the place where it is drawn or the place where it is payable. — E. § 3. — An instrument in the following terms is not a bill of exchange, promissory note, or cheque: "Newcastle 16th March, 1861. The Bank of Australasia, pay 311 amount claimed by G. Tully & Co for rent of goods disputed paid by me to Mr. Hood under protest, thirty pounds sterling". — *Tully v. Dibbs*, 2 S. C. R. (L.) (N. S. W.) 350. Nor an instrument in the following terms: "7th March, 1862. On demand I promise to pay J. T. M., or his order, the sum of £ 800, received this day from the Oriental Bank Corporation for the special purpose of purchasing gold, and for which sum is to be accounted for on or before the 10th inst. A. H. Payable at the Oriental Bank Corporation, Burrangong". — *Oriental Bank v. Horsington*, 1 S. C. R. (L.) (N. S. W.) 217. The terms of the written contract cannot be varied by a contemporaneous verbal agreement. — *Burton v. Ainsworth*, 7 S. C. R. (L.) (N. S. W.) 410; *Howes v. Clarke*, 1 W. N. (N. S. W.) 43; *Frazer v. Hayes*, 6 W. N. (N. S. W.) 110; *Hinton v. Setchell*, 8 S. C. R. (L.) (N. S. W.) 152. — An instrument in the following terms is not a bill of exchange: "Six days after the ship 'Childers' clears the Port Philip Heads, pay John Dynan or bearer the sum £ 5 sterling, provided he proceeds to sea in the above vessel. E." — *Baker v. Efford*, 4 A. J. R. 161. For a case involving the admission of an equitable defence arising out of a contemporaneous verbal agreement, see *Waxman v. Barnard*, 2 V. L. R. (L.) 238. — For a consideration of the nature of a seaman's advance note, see *Jewell v. Giles, Pelham* (S. A.) 72.

Inland and foreign bills. 9. 1. An inland bill is a bill which is, or on the face of it purports to be: a) Both drawn and payable within Australasia, or b) Drawn within Australasia upon some person resident therein. Any other bill is a foreign bill. 2. Unless the contrary appear on the face of the bill the holder may treat it as an inland bill. — E. § 4.

Effect where different parties to bill are the same person. 10. 1. A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee. 2. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note. — E. § 5.

Address to drawee. 11. 1. The drawee must be named or otherwise indicated in a bill with reasonable certainty. 2. A bill may be addressed to two or more drawees, whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange. — E. § 6.

Certainty required as to payee. 12. 1. Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty. 2. A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees. A bill may also be made payable to the holder of an office for the time being. 3. Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer. — E. § 7. — Where the name of a person inserted as that of payee in a bill or note is inserted without any intention that payment shall only be made as if he were a true payee, he becomes a fictitious person within subsection (3), and the bill or note may be treated as payable to bearer. *Seemle*, a payee is fictitious within the meaning of this subsection if he has no interest in the bill or note, and no right to indorse it or be paid upon it. — *City Bank v. Rowan*, 14 L. R. (L.) (N. S. W.) 127; 9 W. N. (N. S. W.) 122. — A note payable to an impossible payee, or order, is payable to bearer; but an instrument which does not contain the name of a payee, order, or bearer, is not negotiable. — *McDonald v. Moffatt*, 5 W. W. & a' B. (L.) 193. — A promissory note made in favour of a company not in existence at the time the note is made, such fact being known to the maker, may be treated as payable to bearer within subsection (3). — *Rutherford Copper Mining Co. v. Ogier*, (1905) Tas. L. R. 156.

What bills are negotiable. 13. 1. When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable. 2. A negotiable bill may be payable either to order or to bearer. 3. A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank. 4. A bill is payable to order which: a) is expressed to be so payable, or b) is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable. 5. Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option. — E. § 8. An instrument in the following terms is not a promissory note: "I promise to pay the sum of £49 13s 4d, and costs, for value received," because the sum is uncertain. — *Bentley v. Jamieson*, 1 W. & W. (L.) 145.

Sum payable. 14. 1. The sum payable by a bill is a sum certain within the meaning of this Act although it is required to be paid: a) With interest; or b) By stated instalments; or c) By stated instalments, with a provision that upon default in payment of any instalment the whole shall become due; or d) According to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill. 2. Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable. 3. Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from the date of the bill, and if the bill is undated from the issue thereof. — E. § 9.

Bill payable on demand. 15. 1. A bill is payable on demand: a) Which is expressed to be payable on demand, or at sight, or on presentation; or b) In which no time for payment is expressed. 2. Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand. — E. § 10.

Bill payable at a future time. 16. A bill is payable at a determinable future time within the meaning of this Act which is expressed to be payable: a) At a fixed period after date or sight; or b) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain. An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect. — E. § 11. — The words "This being collateral security to mortgage given by M. to L. over 5 acres at Lane Cove", appearing in an instrument does not import a condition that the note was only payable in the event of M. not paying off the mortgage. — *Lipscomb v. Matton*, 15 L. R. (L.) (N. S. W.) 362; 11 W. N. (N. S. W.) 57.

Omission of date in bill payable after date. 17. Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of

a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly. Provided that: 1. Where the holder in good faith and by mistake inserts a wrong date, and 2. In every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date. — E. § 12.

Antedating and postdating. 18. 1. Where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be. 2. A bill is not invalid by reason only that it is ante-dated, or post-dated, or that it bears date on a Sunday. — E. § 13. — It is believed that the custom of bankers to refuse payment of post-dated cheques if presented before their date prevails in Sydney and Melbourne, and would have legal recognition. — Russell, *Banker and Customer in Australia*, p. 141. — As to materiality of date, see *Regina v. Gurnett*, 5 W. W. & a'B. (L.) 28. A bill of exchange made and accepted on Sunday is valid, if not in the ordinary course of business. — *Walsh v. Hosking*, 4 W. W. & a'B. (L.) 35. But see now § 18 of this Act. — The true date of a post-dated cheque is the day of its issue, and a banker is not liable for cashing such a cheque before the day of its date. — *Magill v. Bank of North Queensland*, 6 Q. L. J. 262 (per Griffith, C. J., and Real, J.; Harding, J. placing his decision in the case on another ground).

Computation of time of payment. 19. Where a bill is not payable on demand the day on which it falls due is determined as follows: a) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace. Provided that: When the last day of grace falls on a non-business day the bill is due and payable on the succeeding business day; b) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment; c) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance, or for non-delivery; d) The term "month" in a bill means calendar month. — E. § 14.

Case of need. 20. The drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need, or not, as he may think fit. — E. § 15.

Optional stipulations by drawer or indorser. 21. The drawer of a bill, and any indorser, may insert therein an express stipulation: a) Negating or limiting his own liability to the holder; or b) Waiving as regards himself some or all of the holder's duties. — E. § 16.

Definition and requisites of acceptance. 22. 1. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. 2. An acceptance is invalid unless it complies with the following conditions, namely: a) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient; b) It must not express that the drawee will perform his promise by any other means than the payment of money. — E. § 17.

Time for acceptance. 23. 1. A bill may be accepted: a) Before it has been signed by the drawer, or while otherwise incomplete; b) When it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment. 2. When a bill payable after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance. — E. § 18.

General and qualified acceptances. 24. 1. An acceptance is either (a) general, or (b) qualified. 2. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. 3. In particular an acceptance is qualified which is: a) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated; or b) Partial, that is to say, an acceptance to pay part

only of the amount for which the bill is drawn; or c) Local, that is to say, an acceptance to pay only at a particular specified place; or d) Qualified as to time; or e) The acceptance of some one or more of the drawees, but not of all. 4. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere; — E. § 19.

Inchoate instruments. 25. 1. Where a simple signature on a blank stamped paper stamped with an impressed duty stamp is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser. 2. And, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. 3. In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact. Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given. 4. For the purposes of subsection 1 of this section "duty stamp" includes a duty stamp required by the law of the State in which the instrument is issued to be impressed on a bill. — E. § 20. — Where a promissory note with a blank left for the payee's name is delivered by the maker to a creditor in payment of a debt, there is an implied authority given to the creditor to fill in such blank. — *Bagley Brothers v. Ellison*, 16 V. L. R. 263; 11 A. L. T. 174. Where an acceptor of a bill pays the holder the amount of the bill on the understanding that the bill is regular, and upon receiving it, it is discovered that the name of the drawer was not signed, nor a stamp affixed, it was held that the acceptor could recover the amount so paid. — *Woolcott v. Waxman*, 7 A. L. T. 20. One of the essential parts of a cheque is the amount for which it is drawn, and until this portion is filled in the instrument is incomplete, and the banker upon whom the cheque is drawn is not liable in damages to a customer for refusing to honour a cheque thus imperfect. — *Commercial Bank of Australia v. Halls*, 10 V. L. R. (L.) 110; 6 A. L. T. 9.

Delivery. 26. 1. Every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto. Provided that where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable. 2. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, a) In order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing as the case may be; or b) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill. But if the bill be in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed. 3. Where a bill is no longer in the possession of a party who has signed it as a drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved. — E. § 21.

Division 2. Capacity and authority of parties.

Capacity of parties. 27. 1. Capacity to incur liability as a party to a bill is co-extensive with capacity to contract. Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations. 2. Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto. — E. § 22. — A promissory note made by an infant is voidable, not void. It may be ratified by the maker when he becomes of age. — *Rain v. Fullarton*, 21 L. R. (E.) (N. S. W.) 311; 17 W. N. (N. S. W.) 4, 161. Intoxication as a defence, see *Hunter v. McDonald*, 7 S. C. R. (L.) (N. S. W.) 36. But *cp. now the N. S. W. Money-lenders and Infants Loan Act, 1905*, (No. 24 of 1905) § 7, which provides as follows: If any infant, who has contracted a loan which is void or voidable in law, agrees after he comes of age to pay

any money which in whole or in part represents or is agreed to be paid in respect of any such loan, and is not a new advance, such agreement and any instrument, negotiable or other, given in pursuance of or for carrying into effect such agreement or otherwise, in relation to the payment of money representing or in respect of such loan shall, so far as it relates to money which represents or is payable in respect of such loan, and is not a new advance, be void absolutely as against all persons whomsoever.

Signature essential to liability. 28. No person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: Provided that: a) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name; and b) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm. — E. § 23. — A person cannot become liable unless his name appears on the instrument. — *Wilson v. Joshua*, 6 S. C. R. (L.) (N. S. W.) 319.

Forged or unauthorized signature. 29. Subject to the provisions of this Act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill, or to give a discharge therefor, or to enforce payment thereof, against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. Provided that nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery. — E. § 24. — Where after dishonour of a note the alleged maker, whose signature was forged, stated that the signature was his, and where he had made the same statement as to a previous forged note held by the same holder, it was held that there was no estoppel. — *Kernan v. London Discount and Mortgage Bank*, 4 V. L. R. (L.) 279. *Semble*, If the alleged maker had previously paid a forged note, and thereby misled an innocent holder, the case would have been different. — *Ibid*. See also, *Levinger v. Fitzgerald, Johnston & Fitzgerald*, 4 A. J. R. 138.

Procuration signatures. 30. A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority. — E. § 25.

Person signing as agent or in representative capacity. 31. 1. Where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability. 2. In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted. — E. § 26. — Otherwise he becomes personally liable. — *Wilson v. Joshua*, 6 S. C. R. (L.) (N. S. W.) 319. Thus, directors of a company have been held personally liable, where it did not appear on the face of the bill or note that they acted for or on behalf of the company. The mere affixing of the company's seal is not sufficient. — *English, etc., Bank v. Gunn*, 10 S. C. R. (L.) (N. S. W.) 244; *Imperial Land Co. v. Melvey*, 6 W. N. (N. S. W.) 14. But on equitable grounds the defendant may show that he acted in a representative capacity, where the plaintiff has knowledge of the facts, and is not a holder in due course. — *Hoskins v. Thomson*, 14 L. R. (L.) (N. S. W.) 323; 10 W. N. (N. S. W.) 58. See also N. S. W. Companies Act, 1899, § 244. Where directors of a company gave promissory notes on behalf of the company, but signed them with their own names and not as directors, and the payees took them as binding on the company and not on the directors personally, it was held that the persons who signed the notes had a good equitable defence against the payees. — *Dickens & Co. v. Ingram*, 18 V. L. R. 675. See also V. Companies Act, 1890, (No. 1074) § 48, note, *supra*.

Division 3. The consideration for a bill.

Value and holder for value. 32. 1. Valuable consideration for a bill may be constituted by: a) Any consideration sufficient to support a simple contract; or b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time. 2. Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time. 3. Where the holder of a bill has a lien on it arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien. — E. § 27

— For cases where, under the facts, there was no consideration, see *City Bank v. Read*, 1 L. R. (L.) (N. S. W.) 159; *O'Brien v. Cohen*, 2 W. N. (N. S. W.) 86; *Sinclair v. Dixon*, 8 S. C. R. (L.) (N. S. W.) 58. A pre-existing debt is good consideration for a promissory note for more than the debt due. — *Haslam v. Williams*, 14 L. R. (L.) (N. S. W.) 110; 9 W. N. (N. S. W.) 163. Cp. *Devlin v. Lynch*, 1 S. C. R. (L.) (N. S. W.) 53.

Accommodation bill or party. 33. 1. An accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. 2. An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not. — E. § 28. — In order to bind an accommodation indorser of a cheque it is not necessary to present the cheque at the earliest practicable opportunity; it is sufficient if the cheque is presented within a reasonable time. — *Watts v. Spain*, 14 A. L. T. 260. An accommodation bill may be negotiated by the person for whose accommodation it was made both before and after maturity, and also after the death of the accommodation acceptor. — *Clough v. Gray*, 1 W. & W. (E.) 225. Where one of two makers of a promissory note signed as surety only, and received no part of the proceeds of the note, and these facts were known to the holder, and the latter made a composition with the other maker, and gave him additional time, without the knowledge of the surety, it was held that the surety was discharged of his liability. — *Markwell Bros. v. Bennett*, (1904) Q. W. N. 13.

Holder in due course. 34. 1. A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely: a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact; or b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it. 2. In particular the title of a person who negotiates a bill is defective within the meaning of this Act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. 3. A holder (whether for value or not), who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder. — E. § 29. — A promissory note given under compulsion can not be sued on. — *Brunker v. Breckenridge*, 6 S. C. R. (L.) (N. S. W.) 163. A cheque given for money lost at play is void, and can not be sued on even by a holder in due course. The Statute of 9 Anne, c. 14, is in force in N. S. W. — *Edwards v. Hirschman*, 21 L. R. (L.) (N. S. W.) 116; 16 W. N. (N. S. W.) 244, overruling *Woolf v. Towns*, 1 S. C. R. (L.) (N. S. W.) N. S. 242. — As to effect of striking out indorsement, see *Hadley & Co. v. Henry*, 22 V. L. R. 230; 18 A. L. T. 47; 2 A. L. R. 223. — An agreement to pay a high rate of interest, or to allow a large discount, where the transaction is in other respects unimpeachable, does not of itself cast upon a prospective holder the duty of making inquiry whether fraud had been practised. — *Perth Discount Bank v. Stubbs*, 1 W. A. L. R. 186.

Presumption of value and good faith. 35. 1. Every party whose signature appears on a bill is *primâ facie* deemed to have become a party thereto for value. 2. Every holder of a bill is *primâ facie* deemed to be a holder in due course; but if in an action on a bill it is admitted, or proved, that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill. — E. § 30.

Division 4. Negotiation of bills.

Negotiation of bill. 36. 1. A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill. 2. A bill payable to bearer is negotiated by delivery. 3. A bill payable to order is negotiated by the indorsement of the holder completed by delivery. 4. Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferor had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferor. 5. Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability. — E. § 31. — A bill of exchange indorsed in

blank and handed to an agent on behalf of his principal does not entitle such agent to sue thereon in his own name, without the authority of his principal. In this case the agent had a power of attorney authorizing him *inter alia* to bring suits in the principal's name. — Cullen et al. v. Tideman, 4 S. A. L. R. 120.

Requisites of a valid indorsement. 37. An indorsement in order to operate as a negotiation must comply with the following conditions, namely: a) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill without additional words is sufficient. An indorsement written on an allonge, or on a "copy" of a bill, issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself; b) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally does not operate as a negotiation of the bill; c) Where a bill is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others; d) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelled, he may indorse the bill as therein described, adding if he think fit his proper signature; e) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved; f) An indorsement may be made in blank or special. It may also contain terms making it restrictive. — E. § 32. — In a bill payable to order the payee was designated as the "Union Bank of Australia." It was proved that the only bank known by that name was the "Union Bank of Australia, Limited". Held, that this was analogous to a case of misspelling, and that an indorsement in the proper name of the bank was sufficient. — Hadley v. Henry, 22 V. L. R. 230; 18 A. L. T. 47; 2 A. L. R. 223.

Conditional indorsement. 38. Where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not. — E. § 33.

Indorsement in blank and special indorsement. 39. 1. An indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer. 2. A special indorsement specifies the person to whom, or to whose order, the bill is to be payable. 3. The provisions of this Act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement. 4. When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person. — E. § 34.

Restrictive indorsement. 40. 1. An indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof; as, for example, if a bill be indorsed "Pay D. only", or "Pay D. for the account of X.", or "Pay D. or order for collection". 2. A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorise him to do so. 3. Where a restrictive indorsement authorises further transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement. — E. § 35.

Negotiation of overdue or dishonoured bill. 41. 1. Where a bill is negotiable in its origin it continues to be negotiable until it has been: a) Restrictively indorsed; or b) Discharged by payment or otherwise. 2. Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire, or give, a better title than that which the person from whom he took it had. 3. A bill payable on demand is deemed to be overdue, within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact. 4. Except where an indorsement bears date after the maturity of the bill, every negotiation is *primâ facie* deemed to have been effected before the bill was overdue. 5. Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the

dishonour takes it subject to any defect of title attaching thereto at the time of dishonour, but nothing in this subsection shall affect the rights of a holder in due course. — E. § 36. — An indorsee of an overdue bill or note takes it subject to all equities. — *Fitzpatrick v. Macguigan*, 1 S. C. R. (L.) (N. S. W.) 224; *Ickerson v. Hayes*, 5 S. C. R. (L.) (N. S. W.) 158. A note payable on demand that has been presented for payment and dishonoured is not necessarily overdue so as to affect the rights of an indorsee without notice. — *Cohen v. Quigley*, 20 L. R. (L.) (N. S. W.) 136; 15 W. N. (N. S. W.) 307. — An indorsee of an overdue bill or note takes it subject to all equities affecting the instrument at its maturity. — *Webster v. Tulloch*, 2 A. J. R. 57; *Wrixon v. Macoboy*, 6 V. L. R. (L.) 350; 2 A. L. T. 60.

Negotiation of bill to party already liable thereon. 42. Where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, he may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable. — E. § 37.

Rights of the holder. 43. 1. The rights and powers of the holder of a bill are as follows: a) He may sue on the bill in his own name; b) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill. 2. Where his title is defective; a) If he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and b) If he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill. — E. § 38; N. Z. 38. — In order to deprive the holder of his rights as holder in due course it is not necessary to show that he obtained the instrument dishonestly. Negligence, without fraud, may deprive him of his rights. — *Hayes v. Robertson*, 15 V. L. R. 480.

Division 5. General duties of the holder.

When presentment for acceptance is necessary. 44. 1. Where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument. 2. Where a bill expressly stipulates that it shall be presented for acceptance or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment. 3. In no other case is presentment for acceptance necessary in order to render liable any party to the bill. 4. Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers. — E. § 39.

Time for presenting bill payable after sight. 45. 1. Subject to the provisions of this Act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time. 2. If he do not do so, the drawer and all indorsers prior to that holder are discharged. 3. In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. — E. § 40.

Rules as to presentment for acceptance and excuses for non-presentment. 46. 1. A bill is duly presented for acceptance which is presented in accordance with the following rules: a) The presentment must be made by or on behalf of the holder to the drawee, or to some person authorised to accept or refuse acceptance on his behalf, at a reasonable hour on a business day, and before the bill is overdue; b) Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, then presentment may be made to him only; c) Where the drawee is dead, presentment may be made to his personal representative; d) Where the drawee is bankrupt, presentment may be made to him or to his trustee or assignee; e) Where authorized by agreement or usage, a presentment through the Post Office is sufficient. 2. Presentment in accordance with these rules is excused, and a bill may be treated as dishonoured by non-acceptance: a) Where the drawee is dead or bankrupt, or is a fictitious person, or a person not having capacity to contract by bill; b) Where, after the exercise of reasonable diligence,

such presentment cannot be effected; c) Where, although the presentment has been irregular, acceptance has been refused on some other ground. 3. The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment. — E. § 41.

Non-acceptance. 47. When a bill is duly presented for acceptance and is not accepted within the customary time, the person presenting it must treat it as dishonoured by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers. — E. § 42.

Dishonour by non-acceptance and its consequences. 48. 1. A bill is dishonoured by non-acceptance: a) When it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused, or cannot be obtained; or b) When presentment for acceptance is excused and the bill is not accepted. 2. Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary. — E. § 43.

Duties as to qualified acceptances. 49. 1. The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance. 2. Where a qualified acceptance is taken, and the drawer or an indorser has not expressly or impliedly authorised the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill. The provisions of this subsection do not apply to a partial acceptance, whereof due notice has been given. Where a foreign bill has been accepted as to part, it must be protested as to the balance. 3. When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto. — E. § 44.

Rules as to presentment for payment. 50. Subject to the provisions of this Act, a bill must be duly presented for payment. If it be not so presented, the drawer and indorsers shall be discharged. A bill is duly presented for payment which is presented in accordance with the following rules: a) Where the bill is not payable on demand, presentment must be made on the day it falls due; b) Where the bill is payable on demand, then subject to the provisions of this Act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable. In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case; c) Presentment must be made by the holder, or by some person authorized to receive payment on his behalf, at a reasonable hour on a business day, at the proper place as defined in this section, either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his behalf, if with the exercise of reasonable diligence such person can there be found; d) A bill is presented at the proper place: i) Where a place of payment is specified in the bill, and the bill is there presented; ii) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented; iii) Where no place of payment is specified, and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and, if not, at his ordinary residence, if known; iv) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence; e) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required; f) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all; g) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found; h) Where authorized by agreement or usage, a presentment through the Post Office is sufficient. — E. § 45. — *Cp. Burton v. Ainsworth*, 7 S. C. R. (L.) (N. S. W.) 410; *City Bank v. Australian Joint Stock Bank*, 9 S. C. R. (L.) (N. S. W.) 259.

Excuses for delay or non-presentment for payment. 51. 1. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. 2. Presentment for payment is dispensed with: a) Where, after the exercise of reasonable diligence, presentment as required by this Act cannot be effected. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment; b) Where the drawee is a fictitious person; c) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented; d) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented; e) By waiver of presentment, express or implied. — E. § 46.

Dishonour by non-payment. 52. 1. A bill is dishonoured by non-payment: a) When it is duly presented for payment and payment is refused or cannot be obtained; or b) When presentment is dispensed with or excused and the bill is overdue and unpaid. 2. Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder. — E. § 47.

Notice of dishonour and effect of non-notice. 53. Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged: Provided that a) Where a bill is dishonoured by non-acceptance, and notice of dishonour is not given, the rights of a holder in due course subsequent to the omission shall not be prejudiced by the omission and b) Where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted. — E. § 48. — Notice of dishonour of a cheque to the drawer is necessary; mere knowledge of dishonour is not enough. — *Clarke v. McLean*, 4 W. W. & A.B. (L.) 275. If there be any *laches* in the circulation of notice of dishonour back through several parties, *laches* once committed discharge all the antecedent parties, and subsequent notices are invalid, because they are given by parties who are no longer liable on the note. — *Mackenzie v. West*, 16 V. L. R. 588; 12 A. L. T. 63. Notice of dishonour to one co-surety on a note is notice to the other sureties. — *Godfrey v. Hennelly*, 19 V. L. R. 70.

Rules as to notice of dishonour. 54. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules: a) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill; b) Notice of dishonour may be given by an agent either in his own name, or in the name of any party entitled to give notice, whether that party be his principal or not; c) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given; d) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given; e) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonoured by non-acceptance or non-payment; f) The return of a dishonoured bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonour; g) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice, unless the party to whom the notice is given is in fact misled thereby; h) Where notice of dishonour is required to be given to any person, it may be given either to the party himself, or to his agent in that behalf; i) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found; j) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee; k) Where there are two or more drawers

or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others; l) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter. In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless: i) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill; ii) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there is a post at a convenient hour on that day, and if there is no such post on that day, then by the next post thereafter; m) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder; n) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour; o) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour, notwithstanding any miscarriage by the Post Office. — E. § 49. — For a case where under the circumstances notice of dishonour was deemed reasonable, although there was considerable delay in serving it, see *M'Elhone v. Young, Knox* (N. S. W.) 493. — Notice of dishonour must be given to the drawer or indorser or to his trustee or assignee in bankruptcy or insolvency. In the absence of such notice the holder can not prove his debt against the estate. — *In re Levy*, 2 V. R. (E.) 33; 2 A. J. R. 11. Notice of dishonour by any one party to a bill enures to the benefit of the holder. — *Commercial Bank v. Ashton*, 5 A. J. R. 78. A misdescription of the dishonoured instrument does not vitiate the notice of dishonour, unless the party to whom the notice is given is in fact misled thereby. — *Billson v. Hood*, 5 V. L. R. (L.) 125. As to what constitutes reasonable time for the giving of notice of dishonour, see *Bank of Van Diemen's Land v. Bank of Victoria*, 6 W. W. & a'B. (L.) 178; N. C. 1; s. c. affirmed on appeal, L. R. 3 P. C. 526. The doctrine of this case is modified by this section. As to delays excused by reason of bank holidays, see *Henderson v. Horne*, 18 V. L. R. 236; 13 A. L. T. 292.

Excuses for non-notice and delay. 55. 1. Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the notice must be given with reasonable diligence. 2. Notice of dishonour is dispensed with: a) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to, or does not reach, the drawer or indorser sought to be charged; b) By waiver express or implied. Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice; c) As regards the drawer, in the following cases, namely: i) where drawer and drawee are the same person; ii) where the drawee is a fictitious person, or a person not having capacity to contract; iii) where the drawer is the person to whom the bill is presented for payment; iv) where the drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill; v) where the drawer has countermanded payment; d) As regards the indorser, in the following cases, namely: i) where the drawee is a fictitious person, or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the bill; ii) where the indorser is the person to whom the bill is presented for payment, and iii) where the bill was accepted or made for his accommodation. — E. § 50. — Where the indorser stated to the indorsee, before maturity of the instrument, that he knew that it would not be paid, and promised to send money to the bank where it was payable, but failed to do so, it was held that there was evidence for the jury of implied waiver of notice of dishonour. — *Wright, Heaton & Co. v. Barrett*, 13 L. R. (L.) (N. S. W.) 206; 9 W. N. (N. S. W.) 13. — Mere knowledge of the indorser that the bill or note will not be paid on presentation does not dispense with the necessity of giving him notice of dishonour. — *Greig v. Taylor*, 15 V. L. R. 86; 10 A. L. T. 265. *Seemle*, an acknowledgment by an indorser that the amount of a bill is due is not of itself a waiver of notice of dishonour, but is admissible as evidence to show that such notice has been waived. — *In re Levy*, 2 V. R. (E.) 33; 2 A. J. R. 11.

Noting or protest of bill. 56. 1. Where an inland bill has been dishonoured, it may, if the holder think fit, be noted for non-acceptance or non-payment, as

the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser. 2. Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance, it must be duly protested for non-acceptance; and where such a bill, which has not been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonour is unnecessary. 3. A bill which has been protested for non-acceptance may be subsequently protested for non-payment. 4. Subject to the provisions of this Act, when a bill is noted or protested, it must be noted within twenty-four hours after its dishonour. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. 5. Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. 6. A bill must be protested at the place where it is dishonoured: Provided that a) When a bill is presented through the Post Office, and returned by post dishonoured, it may be protested at the place to which it is returned, and on the day of its return if received during business hours, and if not received during business hours then not later than the next business day; b) When a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary. 7. A protest must contain a copy of the bill, and must be signed by the notary or person making it, and must specify: a) The person at whose request the bill is protested; b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found. 8. Where a bill is lost, or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. 9. Protest is dispensed with by any circumstance which would dispense with notice of dishonour. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. — E. § 51.

Duties of holder as regards drawee or acceptor. 57. 1. When a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable. 2. When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures. 3. In order to render the acceptor of a bill liable, it is not necessary to protest it, or that notice of dishonour should be given to him. 4. Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment; and when a bill is paid, the holder shall forthwith deliver it up to the party paying it. — E. § 52. — There is no necessity, in order to charge the acceptor, to present an unqualified general acceptance for payment. — *Lillies v. Harty*, 2 A. J. R. 83.

Division 6. Liabilities of parties.

Funds in hands of drawee. 58. A bill of itself does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. — E. § 53.

Liability of acceptor. 59. The acceptor of a bill by accepting it: a) Engages that he will pay it according to the tenor of his acceptance, and b) Is precluded from denying to a holder in due course: i) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill; and ii) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement; and iii) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement. — E. § 54. — The maker of a note can not deny the existence of the

payee. — *Paterson v. Hughes*, 2 V. R. (L.) 148; 2 A. J. R. 96. Or his capacity to indorse. — *Bank of Victoria v. Brown*, 1 V. L. R. (L.) 47. The acceptor of a bill of exchange can not be permitted to object to the capacity of the drawer. — *Coombs v. McDougall*, 4 A. J. R. 25.

Liability of drawer or indorser. 60. 1. The drawer of a bill by drawing it: a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or any indorser who is compelled to pay it, provided that the requisite proceedings on dishonour be duly taken; and b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse. 2. The indorser of a bill by indorsing it: a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent indorser, who is compelled to pay it, provided that the requisite proceedings on dishonour are duly taken; b) Is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements; and c) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto. — E. § 55. — A person indorsing a bill of exchange not complete and regular on its face, e. g. before acceptance, may become liable as a joint promisor, and the rules governing proceedings on dishonour may not apply. — *Freedman & Co. v. Dan Che Lin*, 7 W. A. L. R. 179. A contemporaneous verbal agreement can not vary the terms of the written agreement of the indorser. — *Moylan v. Salinger & Cohn*, 3 W. A. L. R. 121.

Stranger signing bill liable as indorser. 61. Where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course. — E. § 56. — But he may not incur any liability to the drawer of the bill. — *Cp. Steele v. McKinlay*, L. R. 5 App. Cas. 754; *Jenkins v. Coomber* (1898) 2 Q. B. 168. And so in the case of promissory notes. If a stranger should write his name upon it before the payee has indorsed he would become liable as an indorser to a holder in due course, but would incur no liability to the payee, unless there was a contract of guaranty. (Decision of District Court, Sydney, 8th December, 1906.) *Russell, Banker and Customer in Australia* p. 259. — A person signing on the back of a note payable to order after the maker, but before the note reaches the payee, does not incur the liabilities of an indorser to such payee *qua* payee. (Per totam curiam.) The liability of such a person is that of an indorser to a holder in due course after negotiation by the payee. (Per Cussen, J.) *Quære*, whether the payee of a note payable to order can ever be, *qua* payee, a holder in due course. — *Moss v. Wilson*, 14 A. L. R. 106.

Measure of liquidated damages against parties to dishonoured bill. 62. Where a bill is dishonoured, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows: a) The holder may recover from any party liable on the bill and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser: i) The amount of the bill; ii) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case; and iii) The expenses of noting, or, when protest is necessary and the protest has been extended, the expenses of protest; b) In the case of a bill which has been dishonoured abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment; c) Where by this Act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper. — E. § 57. — In an action on a promissory note it is for the jury to decide whether interest is to be allowed. — *Swanbank Collieries Ltd. v. Lloyd Owen*, B. C. R., 27th October, 1893, cited in *Queensland Digest, 1861 to 1906*, col. 19.

Transferor by delivery and transferee. 63. 1. Where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferor by delivery". 2. A transferor by delivery is not liable on the instrument. 3. A transferor by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value, that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless. — E. § 58.

Division 7. Discharge of bill.

Payment in due course. 64. 1. A bill is discharged by payment in due course by or on behalf of the drawee or acceptor. "Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective. 2. Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged; but a) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill; b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill. 3. Where an accommodation bill is paid in due course by the party accommodated the bill is discharged. — E. § 59.

Banker paying demand draft whereon indorsement is forged. 65. 1. When a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority. 2. An order on demand, drawn by or on behalf of a banker at one place of business on and payable by the banker either at the same or at some other place of business, shall, for the purpose of the protection of the banker under this section, be deemed to be a bill payable to order on demand. — E. § 60. — Under the decision in *Gordon v. London City and Midland Bank, Ltd.*, (1902) 1 K. B. 242; s. c. (1903) A. C. 240, it was held that drafts drawn by one branch of a bank on another branch, as they are not "unconditional orders in writing addressed by one person to another," do not come within the protection of 45 & 46 Vic. c. 61, § 60. Subsection (2) renders this doctrine of the *Gordon* case inapplicable — In *Marshall v. Colonial Bank of Australia*, (1 C. L. R. 632; reversing s. c., 29 V. L. R. 804; 25 A. L. T. 255; affirmed by Privy Council, [1906] A. C. 559, 4 C. L. R. 196) it was held that the mere fact that the drawer signs a cheque upon which there are spaces before the amount in words and in figures, so as to enable the amount of the cheque to be altered fraudulently, is not sufficient evidence of such breach of duty toward the bank upon which the customer draws as to give rise to an estoppel, if another person, subsequently to such signature, fraudulently inserts in such spaces other words and figures so as to increase the amount, and the banker is thereby induced to pay the larger amount. In the opinion in the Privy Council the doctrine is laid down more guardedly, and it seems to be recognized that there might be a distinction between the duty of a customer toward his banker and those of the acceptor of a bill toward the holder, but it is held that the mere fact that the cheque is drawn with spaces such that a forger could utilize them for the purpose of forgery is not of itself any violation of a duty owed by a customer toward his banker. In a New South Wales case decided before the *Gordon* case it was said that the bank would be protected by § 60. — In *re Piercy*, 5 B. C. (N. S. W.) 79. Cp. Russell, *Banker and Customer in Australia*, pp. 198, 199.

Acceptor the holder at maturity. 66. When the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged. — E. § 61.

Express waiver. 67. 1. When the holder of a bill at or after its maturity absolutely and unconditionally renounces his rights against the acceptor the bill is discharged. 2. The renunciation must be in writing, unless the bill is delivered up to the acceptor. 3. The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity, but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation. — E. § 62. — Waiver may be an absolute, unconditional renunciation by the holder, though unaccompanied by satisfaction or any solemn instrument. — *Colonial Bank v. Ettershank*, 4 A. J. R. 10 45, 94, 185; *Bank of Australasia v. Cotchett*, 4 V. L. R. (L.) 226.

Cancellation. 68. 1. Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged. 2. In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is cancelled, is also discharged. 3. A cancellation made unintentionally, or under

a mistake, or without the authority of the holder, is inoperative, but where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. — E. § 63. — The cancellation of the signature of the makers of a dishonoured note, and writing "paid" on the note, corrected before the note is sent back to the holder by a pencilled memorandum thereon to the effect that the cancellation was done inadvertently, can not be effectual to charge a bank with the receipt of the amount of the note. — *Prince v. Oriental Bank*, 14 S. C. R. (L.) (N. S. W.) 383; s. c. L. R. 3 App. Cas. 325. See this case for a discussion of the status of branch banks.

Alteration of bill. 69. 1. Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers. Provided that where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor. 2. In particular the following alterations are material; namely any alteration of the date, the sum payable the time of payment, the place of payment, and, where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent. — E. § 64. — For an alteration deemed immaterial, see *Cohen v. Haynes*, 1 W. N. (N. S. W.) 74. Mere negligence in not perceiving blank spaces in the body of the bill which rendered fraudulent alterations possible will not render an acceptor liable to an indorsee. — *Lea v. Graham*, 1 S. C. R. (L.) (N. S. W.) 288. Cp. *Marshall v. Colonial Bank of Australia*, 1 C. L. R. 632; affirmed by Privy Council, 22 T. L. R. 746, 4 C. L. R. 196. — A material alteration in a bill of exchange or note is one by which the instrument is made to operate differently. — *Luth v. Stewart*, 6 V. L. R. (L.) 383; 2 A. L. J. 78. The addition of a name of a person as joint acceptor is a material alteration, even though such person is under some incapacity. — *Oriental Bank v. Beilby*, 1 V. R. (L.) 66; 1 A. J. R. 81. The insertion of a place of payment, where no place of payment was originally designated, is a material alteration. The enumeration of material alterations in this section is not exhaustive. — *Sims v. Anderson*, (1908) V. L. R. 348; 14 A. L. R. 210. Act, § 61, *infra*.

Division 8. Acceptance and payment for honour.

Acceptance for honour *supra* protest. 70. 1. Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. 2. A bill may be accepted for honour for part only of the sum for which it is drawn. 3. An acceptance for honour *supra* protest in order to be valid must: a) Be written on the bill, and indicate that it is an acceptance for honour; and b) Be signed by the acceptor for honour. 4. Where an acceptance for honour does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer. 5. Where a bill payable after sight is accepted for honour, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honour. — E. § 65.

Liability of acceptor for honour. 71. 1. The acceptor for honour of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment, and protested for non-payment, and that he receives notice of these facts. 2. The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted. — E. § 66.

Presentment to acceptor for honour. 72. 1. Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour or referee in case of need. 2. Where the address of the acceptor for honour is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honour is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him. 3. Delay in presentment or non-presentment is excused by any circumstance

which would excuse delay in presentment for payment or non-presentment for payment. 4. When a bill of exchange is dishonoured by the acceptor for honour it must be protested for non-payment by him. — E. § 67.

Payment for honour *supra* protest. 73. 1. Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person for whose account the bill is drawn. 2. Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference. 3. Payment for honour *supra* protest, in order to operate as such, and not as a mere voluntary payment, must be attested by a notarial act of honour which may be appended to the protest or form an extension of it. 4. The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays. 5. Where a bill has been paid for honour, all parties subsequent to the party for whose honour it is paid are discharged, but the payer for honour is subrogated for, and succeeds to both the rights and duties of, the holder as regards the party for whose honour he pays, and all parties liable to that party. 6. The payer for honour on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up, he shall be liable to the payer for honour in damages. 7. Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment. — E. § 68.

Division 9. Lost instruments.

Holder's right to duplicate of lost bill. 74. 1. Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost is found again. 2. If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so. — E. § 69. — A destroyed note is not a "lost" note. — *Ex parte Walker*, 9 W. N. (N. S. W.) 1.

Action on lost bill. 75. In any action or proceeding upon a bill, the Court, or a Judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question. — E. § 70. — Where the plaintiff fails to apply for an order that the loss of the bill or note sued upon should not be set up by the defendant, until after the defence has been delivered, the order asked for will be made on the terms that the plaintiff pay the costs of the application. — *Harkness v. Dixon*, 10 A. L. T. 137.

Division 10. Bill in a set.

Rules as to sets. 76. 1. Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill. 2. Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills. 3. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill, but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him. 4. The acceptance may be written on any part, and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill. 5. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof. 6. Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. — E. § 71.

Division 11. Conflict of laws.

Rules where laws conflict. 77. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows: a) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract was made. Provided that i) Where a bill is issued out of Australia it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue; ii) Where a bill issued out of Australia conforms, as regards requisites in form, to the law of Australia, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in Australia; b) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of a bill, is determined by the law of the place where such contract is made. Provided that where an inland bill is indorsed in a foreign country the indorsement shall as regards the payer be interpreted according to the law of Australia; c) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured; d) Where a bill is drawn out of, but payable in Australia, and the sum payable is not expressed in the currency of Australia, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable; e) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable. — E. § 72. — A promissory note made in England, and void there because not properly stamped can not be sued on in New South Wales. — *Gilchrist v. Davidson*, Legge (N. S. W.) 539. But see now this section. — In an action upon a note it appeared that the defendant, the maker, resided in New South Wales, and the plaintiff, the payee, carried on business in Victoria. The note was dated as in Melbourne, and was payable in New South Wales. Held, that as against the maker the presumption arising from the note itself was that it was both made and delivered in Victoria. — *L. Stevenson & Sons Ltd. v. Rosenfeld*, 20 A. L. T. 153; 4 A. L. R. 297.

*Part III. Cheques on a Banker.**Division 1. Cheques generally.*

Cheque defined. 78. 1. A cheque is a bill of exchange drawn on a banker payable on demand. 2. Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque. — E. § 73. — A cheque payable to bearer is a negotiable instrument, and passes by indorsement so as to entitle the holder to sue the indorser as in the case of a bill of exchange. — *Popjoy v. Fetting*, 8 A. L. T. 127.

Presentment of cheque for payment. 79. Subject to the provisions of this Act: a) Where a cheque is not presented for payment within a reasonable time of its issue, and the drawer, or the person on whose account it is drawn, had the right at the time at which the presentment ought to have been made, as between him and the banker, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid; b) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case; c) The holder of such cheque as to which such drawer or person is discharged shall be a creditor, in lieu of such drawer or person, of such banker to the extent of such discharge, and entitled to recover the amount from him. — E. § 74.

Rights of banker as regards stale cheques. 80. 1. In the absence of any agreement between the banker and the drawer of the cheque or of any direction of the drawer of the cheque to the contrary, a banker may refuse payment of a stale cheque. 2. A stale cheque is a cheque which appears on the face of it to have been in circulation for more than twelve months.

Revocation of banker's authority. 81. The duty and authority of a banker to pay a cheque drawn on him by his customer are determined by a) Countermand of payment; b) Notice of the customer's death. — E. § 75.

Division 2. Crossed cheques.

General and special crossings defined. 82. 1. Where a cheque bears across its face an addition of a) The word "bank", or the words "and company", or any abbreviation thereof respectively, between two parallel transverse lines, either with or without the words "not negotiable", or b) Two parallel transverse lines simply, either with or without the words "not negotiable", that addition constitutes a crossing, and the cheque is crossed generally. 2. Where a cheque bears across its face an addition of the name of a banker, either with or without the words "not negotiable", that addition constitutes a crossing, and the cheque is crossed specially and to that banker. — E. § 76. — As to liability of a bank to the holder of a crossed cheque that has been lost, and the loss of which has been duly notified to the bank by the holder, see *Colonial Bank of Australasia v. Hunter*, 1 W. & W. (L.) 236.

Crossing by drawer or after issue. 83. 1. A cheque may be crossed generally or specially by the drawer. 2. Where a cheque is uncrossed, the holder may cross it generally or specially. 3. Where a cheque is crossed generally, the holder may cross it specially. 4. Where a cheque is crossed generally or specially, the holder may add the words "not negotiable". 5. Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker for collection. 6. Where an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself. — E. § 77.

Crossing a material part of cheque. 84. A crossing authorized by this Act is a material part of the cheque; it shall not be lawful for any person to obliterate, or, except as authorized by this Act, to add to or alter the crossing. — E. § 78.

Duties of banker as to crossed cheques. 85. 1. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof. 2. Where the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid. 3. Provided that where a cheque is presented for payment which does not at the time of presentment appear a) to be crossed, or b) to have had a crossing which has been obliterated, or c) to have a crossing which has been added to or altered otherwise than as authorized by this Act, the banker paying or receiving payment of the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a banker, or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be. — E. § 79.

Protection to banker and drawer where cheque is crossed. 86. Where the banker on whom a crossed cheque is drawn in good faith and without negligence a) if crossed generally, pays it, to a banker, and, b) if it is crossed specially pays it to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall respectively be entitled to the same rights, and be placed in the same position, as if payment of the cheque had been made to the true owner thereof. — E. § 80.

Effect of crossing on holder. 87. Where a person takes a crossed cheque which bears on it the words "not negotiable", he shall not have, and shall not be capable of giving, a better title to the cheque than that which the person from whom he took it had. — E. § 81.

Protection to collecting banker. 88. 1. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally

or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment. 2. A banker receives payment of a crossed cheque for a customer within the meaning of this section, notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof. — E. § 82, as modified by 6 Edw. 7, c. 17, § 1.

Part IV. Promissory Notes.

Promissory note defined. 89. 1. A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer. 2. An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker. 3. A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof. 4. A note which is, or on the face of it purports to be, both made and payable within Australasia is an inland note. Any other note is a foreign note. — E. § 83.

Delivery necessary. 90. A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer. — E. § 84.

Joint and several notes. 91. 1. A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor. 2. Where a note runs "I promise to pay", and is signed by two or more persons, it is deemed to be their joint and several note. — E. § 85.

Note payable on demand. 92. 1. Where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged. 2. In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case. 3. Where a note payable on demand is negotiated, it is not deemed to be overdue for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. — E. § 86.

Presentment of note for payment. 93. 1. Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place, in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable. 2. Presentment for payment is necessary in order to render the indorser of a note liable. 3. Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice. — E. § 87.

Liability of maker. 94. The maker of a promissory note by making it: a) Engages that he will pay it according to its tenor; b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse. — E. § 88.

Application of Part II to notes. 95. 1. Subject to the provisions in this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply with the necessary modifications to promissory notes. 2. In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order. 3. The following provisions as to bills do not apply to notes, namely, provisions relating to: a) Presentment for acceptance; b) Acceptance; c) Acceptance *supra* protest; d) Bills in a set. 4. Where a foreign note is dishonoured, protest thereof is unnecessary. — E. § 89.

Part V. Supplementary.

Good faith. 96. A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly, whether it is done negligently or not. — E. § 90.

Signature. 97. 1. Where by this Act any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority. 2. In the case of a corporation, where by this Act any instrument or writing is required to be signed, it is sufficient if the instrument or writing be sealed with the corporate seal. But nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal. — E. § 91. — Under (1) the person so signing another's name incurs no responsibility. — Cp. *Australian Loan Co. v. Kirchner*, 8 L. R. (N. S. W.) 296.

Computation of time. 98. 1. Where by this Act the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. 2. When the day on which any payment, presentment, notice, noting, protest, acceptance, act or thing should be made, given or done in connexion with a bill, cheque, or note falls on a non-business day, it may be made, given, or done on the business day next following. 3. "Non-business days" for the purposes of this Act mean: a) Sunday, Good Friday, Christmas Day; b) A bank holiday; Any other day is a business day. 4. Where in pursuance of the law of the Commonwealth or of a State any day is declared to be a bank holiday in the Commonwealth or in a State or in a part of the Commonwealth or of a State, that day shall, for the purposes of this Act, be a bank holiday in the Commonwealth or in the State, or in the Part of the Commonwealth or of the State as the case requires. 5. Where in pursuance of the law of the Commonwealth or of a State, any portion of a day is declared to be a bank half-holiday in the Commonwealth or in a State or in a part of the Commonwealth or of a State, the day shall be deemed to be a bank holiday so far as regards bills of exchange and promissory notes payable on that day at any bank in the locality to which the half-holiday applies and not presented for payment during the portion of the day not included in the bank half-holiday. — E. § 92.

When noting equivalent to protest. 99. For the purposes of this Act, where a bill or note is required to be protested within a specified time, or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time, or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting. — E. § 93.

Protest when notary not accessible. 100. Where a dishonoured bill or note is authorized or required to be protested, any householder or substantial resident of the place where the bill is dishonoured may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. The form given in the second Schedule may be used with necessary modifications, and if used shall be sufficient. — E. § 94.

Dividend warrants. 101. 1. The provisions of this Act as to crossed cheques shall apply to dividend warrants. 2. Nothing in this Act shall affect the validity of any usage relating to dividend warrants or the indorsement thereof. — E. § 95.

Schedules.

The first Schedule.

Short Title and Number of Act.	Extent to which the Act is to cease to apply to bills, cheques and notes drawn or made after the commencement of this Act.
The Bills of Exchange Act 1887. No. 2	The whole.
The Banks and Bank Holidays Act 1898. No. 9.	Sub-sections (2) and (3) of section fourteen, and sections fifteen and sixteen, and all words in section seventeen from and including the words "and shall as regards bills of exchange."
The Banks Half-holiday Act 1900. No. 80.	Sub-section (2) of section two.

New South Wales.

Short Title and Number of Act.	Extent to which the Act is to cease to apply to bills, cheques and notes drawn or made after the commencement of this Act.
<i>Victoria.</i>	
The Instruments Act 1890. No. 1103.	The whole of Part I except Division 4 thereof.
The Banks and Currency Act 1890. No. 1164	All words in section seventeen from and including the words "and all bills of exchange," and section eighteen, nineteen, and twenty-three.
The Public and Bank Holidays Act 1897. No. 1534.	All words in section four from and including the words "and so far as regards all bills of exchange."
The Instruments Act 1904. No. 1925.	The whole.
<i>Queensland.</i>	
The Bills of Exchange Act of 1884. No. 10.	The whole.
The Bank Holidays Act of 1904. No. 8.	Sections seven, eight, and nine, and all words in section ten from and including the words "On any day on which it is lawful."
The Bills of Exchange Act Amendment Act of 1905. No. 7.	The whole.
<i>South Australia.</i>	
The Bank Holidays Act 1873. No. 19.	All words in section one from and including the words "and all bills of exchange" to and including the words "lawfully noted or protested," and sections two and three, and all words in section four from and including the words "and shall, as regards bills of exchange."
The Bills of Exchange Act 1884. No. 312.	The whole.
The Bills of Exchange Amendment Act 1904. No. 867.	The whole.
<i>Western Australia.</i>	
The Bank Holidays Act 1884. No. 9.	All words in section one from and including the words "and all bills of exchange," and sections two and three, and all words in section five from and including the words "and shall, as regards bills of exchange."
The Bills of Exchange Act of 1884. No. 10.	The whole.
The Bills of Exchange Act 1904. No. 54.	The whole.
<i>Tasmania.</i>	
The Bills of Exchange Act 1884. No. 14.	The whole.
The Bank Holidays Act 1903. No. 4.	All words in section five from and including the words "and all bills of exchange," and sections six and seven, and all words in sub-section (1) of section eight from and including the words "and shall, as regards bills of exchange," and section nine.
The Bills of Exchange Act 1905. No. 7.	The whole.
The Bills of Exchange Amendment Act 1906. No. 29.	The whole.

Second Schedule.

Form of Protest which may be used.

Know all men that I, A. B. [householder], of _____ in the State of _____ in the Commonwealth of Australia, at the request of C. D., did on the _____ day of _____ 19____ at _____ demand payment [or acceptance] of the bill of exchange hereunder written, from E. F., to which demand he made answer [*state answer, if any*], wherefore I now in the presence of G. H. and J. K. do protest the said bill of exchange.

Dated this _____ day of _____ at _____

(Signed) A. B.
 G. H. } Witnesses.
 J. K. }

NB. The bill itself should be annexed, or a copy of the bill and all that is written thereon should be underwritten.

B. State Statutes.

Partnership Acts.¹⁾

1. New South Wales. 55 Vic. No. 12. An Act to declare and amend the law of Partnership (20th February, 1892).

Nature of partnership.

Definition of partnership. 1. Partnership is the relation which exists between persons carrying on a business in common with a view of profit. 2. But the relation between members of any company or association which is: a) Registered, as a company under the *Companies Act* or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or b) Formed or incorporated by or in pursuance of any other Act of Parliament or Letters Patent or Royal Charter is not a partnership within the meaning of this Act. — E. § 1; V. 5; T. 6; S. A. 1; Q. 5; W. A. 4, 7; N. Z. 4. — Partnership is a contractual relation. Its existence depends on the intention of the parties as ascertained from their acts. *Montefiore v. Smith*, 14 S. C. R. (N. S. W.) 245. The contract may be verbal or in writing. It has been held that § 4 of the Statute of Frauds (29 Car. 2 c. 3), requiring certain agreements to be in writing, does not apply to an agreement wherein certain persons agreed with a third person that the latter should prospect for minerals while the former were to furnish the necessary funds for supplies and expenses, all minerals found to be partnership property. — *Kennedy v. Currie*, 17 L. R. Eq. (N. S. W.) 28; 12 W. N. (N. S. W.) 105. Nor to an agreement to acquire a mineral lease under the Mining Act. Such interest is deemed personalty. — *Williams v. Robinson*, 12 L. R. Eq. (N. S. W.) 34; 7 W. N. (N. S. W.) 153.

Rules for determining existence of partnership. 2. In determining whether a partnership does or does not exist, regard shall be had to the following rules: 1. Joint tenancy, tenancy in common, joint property, or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof. 2. The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which, or from the use of which, the returns are derived. 3. The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share or of a payment contingent on, or varying with the profits of a business does not of itself make him a partner in the business; and in particular: a) The receipt by a person of a debt or other liquidated demand by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as such; b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such; c) A person being the widow or child of a deceased partner, and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as such; d) The advance of money by way of loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such. Provided that the contract is in writing and signed by or on behalf of all the parties thereto; e) A person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as such. — E. § 2; V. 6; T. 7; S. A. 2; Q. 6; W. A. 8; N. Z. 5. — An agreement to work land on shares creates a tenancy. — *Ex parte Foster*, 3 S. R. (N. S. W.) 645; 20 W. N. (N. S. W.) 228. *Seem*, it is not a partnership. — *Ex parte Duggan*, 19 W. N. (N. S. W.) 260; *Ex parte McAndrew*, 21 W. N. (N. S. W.) 20. Executors allowing the assets of the estate to remain in a business, and receiving a share of the profits, do not thereby necessarily create a partnership relation. — *Brown v.*

¹⁾ The statutes referred to in the annotations are those of England (E.) 53 & 54 Vic. c. 39, and the Partnership Acts of the Australian States and of New Zealand printed in this volume.

Fletcher, 5 L. R. (N. S. W.) 393; 1 W. N. (N. S. W.) 66. A. and B. entered into a contract under the terms of which B. undertook to carry on a business in consideration of A.'s financing the operations. Two-thirds of the profits of the business were to be applied to the reduction of B.'s indebtedness to A. A. had the right to terminate the agreement at any time, or extend its operation, and had the right to avail himself of the books of the business at any time. Held, not sufficient to show the existence of a partnership. — *John Bridge & Co. v. Magrath*, 4 S. R. (N. S. W.) 441; 21 W. N. (N. S. W.) 159. *Cp. Harbottle v. Hargraves*, 5 S. C. R. (N. S. W.) 104.

Postponement of rights of persons lending or selling in consideration of share of profits in case of insolvency. 3. In the event of any person to whom money has been advanced by way of loan upon such a contract as is mentioned in the last foregoing section, or of any buyer of a goodwill in consideration of a share of the profits of the business being adjudged a bankrupt, entering into an arrangement to pay his creditors less than twenty shillings in the pound, or dying in insolvent circumstances, the lender of the loan shall not be entitled to recover anything in respect of his loan, and the seller of the goodwill shall not be entitled to recover anything in respect of the share of profits contracted for, until the claims of the other creditors of the borrower or buyer for valuable consideration in money or money's worth have been satisfied. — E. § 3; V. 7; T. 8; S. A. 3; Q. 7; W. A. 9; N. Z. 6.

Meaning of firms. 4. Persons who have entered into partnership with one another are for the purpose of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name. — E. § 4; V. 8; T. 9; S. A. 4; Q. 3; W. A. 10; N. Z. 7. — And see the Registration of Firms Acts given *infra*.

Relation of partners to persons dealing with them.

Power of partner to bind the firm. 5. Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, binds¹⁾ the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner. — E. § 5; V. 9; T. 10; S. A. 5; Q. 8; W. A. 26; N. Z. 8. — The extent of the partner's implied power to bind the firm depends largely on the nature of the business. Thus, a member of a partnership carrying on an auctioneering business was held to have no implied power, under the circumstances of the particular case, to sign notes and thereby bind his co-partners. — *Hoffnung v. Simpson*, 2 L. R. (N. S. W.) 133. Nor a member of a partnership carrying on a stock and station agency in a country town to borrow money on behalf of the firm. — *Commercial Bank v. Lakeman*, 7 W. N. (N. S. W.) 40. Nor a partner in a station to dispose of the land used for the business of the firm by giving a deed in the firm name. — *Bowen v. Morrison*, 14 S. C. R. (N. S. W.) 199. On the other hand, the power to borrow money on behalf of the firm would be implied where the partnership is engaged in ordinary mercantile business, or other business ordinarily requiring loans of money. — *Graham v. Murnin*, 1 S. C. R. (N. S. W.) 195. So too, a partner has implied authority to sue in the firm name. — *Proudfoot v. Bank of New Zealand*, 6 L. R. (N. S. W.) 170; 2 W. N. (N. S. W.) 15.

Partners bound by acts on behalf of firm. 6. An act or instrument relating to the business of the firm, and done or executed in the firm-name, or in any other manner, showing an intention to bind the firm by any person thereto authorised, whether a partner or not, is binding on the firm and all the partners. Provided that this section shall not affect any general rule of law relating to the execution of deeds or negotiable instruments. — E. § 6; V. 10; T. 11; S. A. 6; Q. 9; W. A. 13, 27; N. Z. 9. *Cp. Bowen v. Morrison*, 14 S. C. R. (N. S. W.) 199. In the absence of fraud and collusion, even though the partner acts wrongfully. — *Burke v. Proudfoot*, 11 L. R. (N. S. W.) 75; 6 W. N. (N. S. W.) 135.

Partners using credit of firm for private purposes. 7. Where one partner pledges the credit of the firm for a purpose apparently not connected with the firm's ordinary course of business, the firm is not bound unless he is in fact specially authorised by the other partners; but this section does not affect any personal liability incurred by an individual partner. — E. § 7; V. 11; T. 12; S. A. 7; Q. 10; W. A. 14; N. Z. 10.

Effect of notice that firm will not be bound by acts of partner. 8. If it has been agreed between the partners that any restrictions shall be placed upon the

¹⁾ *Sic*; obviously "bind".

power or¹⁾ any one or more of them to bind the firm, no act done in contravention of the agreement is binding on the firm with respect to persons having notice of the agreement. — E. § 8; V. 12; T. 13; S. A. 8; Q. 11; W. A. 15; N. Z. 11.

Liability of partner. 9. Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner; and after his death his estate is also severally liable in a due course of administration for such debts and obligations so far as they remain unsatisfied, but subject to the prior payment of his separate debts. — E. § 9; V. 13; T. 14; S. A. 9; Q. 12; W. A. 16; N. Z. 12.

Liability of the firm for wrongs. 10. Where by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner of the firm, or any penalty is incurred, the firm is liable therefor to the same extent as the partner so acting or omitting to act. — E. § 10; V. 14; T. 15; S. A. 10; Q. 13; W. A. 17; N. Z. 13.

Misapplication of money or property received for or in custody of the firm. 11. In the following cases, namely: a) Where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and: b) When a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm; the firm is liable to make good the loss. — E. § 11; V. 15; T. 16; S. A. 11; Q. 14; W. A. 18; N. Z. 14.

Liability for wrongs joint and several. 12. Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under either of the two last preceding sections. — E. § 12; V. 16; T. 17; S. A. 12; Q. 15; W. A. 19; N. Z. 15.

Improper employment of trust property for partnership purposes. 13. If a partner being a trustee improperly employs trust property in the business or on account of the partnership, no other partner is liable for the trust property to the persons beneficially interested therein: Provided as follows: 1. This section shall not affect any liability incurred by any partner by reason of his having notice of a breach of trust; and: 2. Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control. — E. § 13; V. 17; T. 18; S. A. 13; Q. 16; W. A. 20; N. Z. 16.

Persons liable by "holding out". 14. 1. Every one who by words spoken or written, or by conduct represents himself, or who knowingly suffers himself to be represented as a partner in a particular firm, is liable as a partner to any one who has on the faith of any such representation given credit to the firm, whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or suffering it to be made. 2. Provided that where after a partner's death the partnership business is continued in the old firm-name, the continued use of that name or of the deceased's partner's name as part thereof shall not of itself make his executors or administrators²⁾, estate or effects liable for any partnership debts contracted after his death. — E. § 14; V. 18; T. 19; S. A. 14; Q. 17; W. A. 21; N. Z. 17. — So, where two persons habitually join in signing cheques drawn upon a bank upon the account of a particular business, they may, as regards the bank, become estopped from denying that they are partners. — *A. J. S. Bank v. Steel*, 11 L. R. (Eq.) (N. S. W.) 328; 6 W. N. (N. S. W.) 150; 7 W. N. (N. S. W.) 59. Cp. *Ross v. Orient S. N. Co.*, 5 L. R. (N. S. W.) 30.

Admissions and representations of partners. 15. An admission or representation made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm. — E. § 15; V. 19; T. 20; S. A. 15; Q. 18; W. A. 22; N. Z. 18.

Notice to acting partner to be notice to the firm. 16. Notice to any partner who habitually acts in the partnership business of any matter relating to partnership affairs operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner. — E. § 16; V. 20; T. 21; S. A. 16; Q. 19; W. A. 23; N. Z. 19.

Liabilities of incoming and outgoing partners. 17. 1. A person who is admitted as a partner into an existing firm does not thereby become liable to the creditors

¹⁾ *Sic*; obviously "of". — ²⁾ *Sic*; obviously "administrators".

of the firm for anything done before he became a partner. 2. A partner who retires from a firm does not thereby cease to be liable for partnership debt and obligation incurred before his retirement. 3. A retiring partner may be discharged from any existing liabilities by an agreement to that effect between himself and the members of the firm as newly constituted and the creditors, and this agreement may be either expressed or inferred as a fact from the course of dealing between the creditors and the firm as newly constituted. — E. § 17; V. 21; T. 22; S. A. 17; Q. 20; W. A. 24; N. Z. 20.

Revocation of continuing guaranty by change of firm. 18. A continuing guaranty or cautionary obligation given either to a firm or to a third person in respect of the transactions of a firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of whose transactions, the guaranty or obligation was given. — E. § 18; V. 22; T. 23; S. A. 18; Q. 21; W. A. 25; N. Z. 21.

Relations of partners to one another.

Variation by consent of terms of partnership. 19. The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either expressed or inferred from a course of dealing. — E. § 19; V. 23; T. 24; S. A. 19; Q. 22; W. A. 29; N. Z. 22.

Partnership property. 20. 1. All property, and rights and interests in property, originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership, and in accordance with the partnership agreement. 2. Provided that the legal estate or interest in any land which belongs to the partnership shall devolve according to the nature and tenure thereof, and the general rules of law thereto applicable, but in trust so far as is necessary for the persons beneficially interested in the land under this section. 3. Where co-owners of an estate or interest in any land, not being itself partnership property, are partners as to profits made by the use of that land or estate, and purchase other lands and estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first-mentioned at the date of the purchase. — E. § 20; V. 24; T. 25; S. A. 20; Q. 23; W. A. 30; N. Z. 23.

Property bought with partnership money. 21. Unless the contrary intention appears, property bought with money belonging to the firm is deemed to have been bought on account of the firm. — E. § 21; V. 25; T. 26; S. A. 21; Q. 24; W. A. 31; N. Z. 24.

Conversion into personal estate of land held as partnership property. 22. Where land or any heritable interest therein has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators as personal or movable and not real or heritable estate. — E. § 22; V. 26; T. 27; S. A. 22; Q. 25; W. A. 32; N. Z. 25.

Procedure against partnership property for a partner's separate judgment debt. 23. 1. After the commencement of this Act a writ of execution shall not issue against any partnership property except on a judgment against the firm. 2. The Supreme Court or a Judge thereof, may, on the application by summons of any judgment creditor of a partner, make an order charging that partner's interest in the partnership property and profits with payment of the amount of the judgment debt and interest thereon, and may by the same or a subsequent order appoint a receiver of that partner's share of profits (whether already declared or accruing), and of any other money which may be coming to him in respect of the partnership, and direct all accounts and inquiries, and give all other orders and directions which might have been directed or given if the charge had been made in favour of the judgment creditor by the partner, or which the circumstances of the case may require. 3. The other partner or partners shall be at liberty at any time to redeem the interest charged, or in the case of a sale being directed to pur-

chase the same. — E. § 23; V. 27; T. 28; S. A. 23; Q. 26; W. A. 33; N. Z. 26. — For a case applying the law as it existed prior to this Act, see *Smith v. Ogg*, 3 S. C. R. (N. S. W.) 6. Cp. also *Lane v. Taylor*, 5 S. C. R. (L.) N. S. W.) 84.

Rules as to the interests and duty of partners subject to special agreement.

24. The interest of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement expressed or implied between the partners, by the following rules: 1. All the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses whether of capital or otherwise sustained by the firm. 2. The firm must indemnify every partner in respect of payment made and personal liabilities incurred by him: a) In the ordinary and proper conduct of the business of the firm; or b) In or about anything necessarily done for the preservation of the business or property of the firm. 3. A partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe is entitled to interest at the rate of seven per centum per annum from the date of the payment or advances. 4. A partner is not entitled before the ascertainment of profits to interest on the capital subscribed by him. 5. Every partner may take part in the management of the partnership business. 6. No partner shall be entitled to remuneration for acting in the partnership business. 7. No person may be introduced as a partner without the consent of all existing partners. 8. Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no change may be made in the nature of the partnership business without the consent of all existing partners. 9. The partnership books are to be kept at the place of business of the partnership (or the principal place, if there is more than one), and every partner may, when he thinks fit, have access to and inspect and copy any of them. — E. § 24; V. 28; T. 29; S. A. 24; Q. 27; W. A. 34; N. Z. 27. — A term of a partnership agreement may be tacitly abandoned and a new one adopted by consent as indicated by a course of conduct. — *Alison v. Alison*, 11 L. R. (Eq.) (N. S. W.) 75, 162.

Expulsion of partner. 25. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners. — E. § 25; V. 29; T. 30; S. A. 25; Q. 28; W. A. 35; N. Z. 28.

Retirement from partnership at will. 26. 1. Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners. 2. Where the partnership has originally been constituted by deed, a notice signed by the partner giving it shall be sufficient for this purpose. — E. § 26; V. 30; T. 31; S. A. 26; Q. 29; W. A. 36, 37; N. Z. 29.

Where partnership for term is continued over, continuance on old terms presumed. 27. 1. Where a partnership entered into for a fixed term is continued after the term has expired, and without any express new agreement, the rights and duties of the partners remain the same as they were at the expiration of the term, so far as is consistent with the incidents of a partnership at will. 2. A continuance of the business by the partners or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs, is presumed to be a continuance of the partnership. — E. § 27; V. 31; T. 32; S. A. 27; Q. 30; W. A. 38; N. Z. 30.

Duty of partners to render accounts. 28. Partners are bound to render true accounts and full information of all things affecting the partnership to any partner or his legal representatives. — E. § 28; V. 32; T. 33; S. A. 28; Q. 31; W. A. 39; N. Z. 31.

Accountability of partners for private profits. 29. 1. Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or for any use by him of the partnership property, name, or business connexion. 2. This section applies also to transactions undertaken after a partnership has been dissolved by the death of a partner, and before the affairs thereof have been completely wound up, either by any surviving partner or by the representatives of the deceased partner. — E. § 29; V. 33; T. 34; S. A. 29; Q. 32; W. A. 40; N. Z. 32.

Duty of partner not to compete with firm. 30. If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all

profits made by him in that business. — E. § 30; V. 34; T. 35; S. A. 30; Q. 33; W. A. 41; N. Z. 33.

Rights of assignee of share in partnership. 31. 1. An assignment by any partner of his share in the partnership, either absolute or by way of mortgage or redeemable charge, does not, as against the other partners, entitle the assignee during the continuance of the partnership, to interfere in the management or administration of the partnership business or affairs, or to require any account of the partnership transactions, or to inspect the partnership books, but entitles the assignee only to receive the share of profits to which the assigning partner would otherwise be entitled, and the assignee must accept the account of profits agreed to by the partners. 2. In case of a dissolution of the partnership, whether as respect all the partners, or as respects the assigning partner, the assignee is entitled to receive the share of the partnership assets to which the assigning partner is entitled as between himself and the other partners, and for the purpose of ascertaining that share, to an account as from the date of the dissolution. — E. § 31; V. 35; T. 36; S. A. 31; Q. 34; W. A. 42; N. Z. 34. — For a case where this section did not apply, see *Gander v. Murray*, 5 C. L. R. 575; reversing *Murray v. Zobel*, 8 S. R. (N. S. W.) 81.

Dissolution of partnership and its consequences.

Dissolution by expiration or otherwise. 32. Subject to any agreement between the partners, a partnership is dissolved; a) If entered into for a fixed term, by the expiration of that term; b) If entered into for a single adventure or undertaking, by the termination of that adventure or undertaking; c) If entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership. In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is mentioned, as from the date of the communication of the notice. — E. § 32; V. 36; T. 37; S. A. 32; Q. 35; W. A. 43; N. Z. 35. — A partnership may be dissolved at any time by the agreement of all the partners. Thus, A. and B., who were partners, agreed that each should tender for the partnership assets, and that the same should become the property of the person making the highest offer. Held, that the partnership was dissolved as soon as a tender was made. — *Loveridge v. Taylor*, 17 L. R. (N. S. W.) 50; 12 W. N. (N. S. W.) 170.

Dissolution by bankruptcy, death, or change. 33. 1. Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner. 2. A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt. — E. § 33; V. 37; T. 38; S. A. 33; Q. 36; W. A. 44; N. Z. 36. — An assignment for the benefit of creditors *ipso facto* dissolves a partnership at will. The assignor ceases to be liable for partnership debts contracted after such assignment. — *Davies v. Barlow*, 2 L. R. (L.) (N. S. W.) 66; *Tarl* (N. S. W.) 10. See also *Brooks v. Richardson*, 5 S. C. R. (Eq.) (N. S. W.) 3.

Dissolution by illegality of partnership. 34. A partnership is in every case dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on, or for the members of the firm to carry it on in partnership. — E. 34; V. 38; T. 39; S. A. 34; Q. 37; W. A. 45; N. Z. 37.

Dissolution by the Court. 35. On application by a partner the Court may decree a dissolution of the partnership in any of the following cases: a) When a partner has been declared in accordance with law to be of unsound mind and incapable of managing his affairs, or is shown to the satisfaction of the Court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner; b) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract; c) When a partner, other than the partner suing, has been guilty of such conduct as, in the opinion of the Court, regard being had to the nature of the business, is calculated to prejudicially¹⁾ affect the carrying on of the business; d) When a partner, other than the party suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the

¹⁾ *Sic*; obviously "prejudicially".

business in partnership with him; e) When the business of the partnership can only be carried on at a loss; f) Whenever in any case circumstances have arisen which, in the opinion of the Court, render it just and equitable that the partnership be dissolved. — E. § 35; V. 39; T. 40; S. A. 35; Q. 38; W. A. 46; N. Z. 38. — For a case where the court refused dissolution on the ground of misconduct of the plaintiff, see *Wyse v. Heggarty*, 2 S. C. R. (Eq.) (N. S. W.) 95. The sale must be for cash. — *Drinan v. Drinan* 8 S. R. (N. S. W.) 109; 25 W. N. (N. S. W.) 34.

Rights of persons dealing with firm against apparent members of firm.

36. 1. When a person deals with a firm after a change in its constitution, he is entitled to treat all apparent members of the old firm as still being members of the firm until he has notice of the change. 2. An advertisement in the *Gazette* and in at least one newspaper circulating in Sydney and one newspaper circulating in the district in which the firm carries on business shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised. 3. The estate of a partner who dies, or who becomes bankrupt, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, bankruptcy, or retirement respectively. — E. § 36; V. 40; T. 41; S. A. 36; Q. 39; W. A. 47; N. Z. 39.

Right of partners to notify dissolution. **37.** On the dissolution of a partnership or retirement of a partner any partner may publicly notify the same, and may require the other partner or partners to concur for that purpose in all necessary and proper acts, if any, which cannot be done without his or their concurrence. — E. § 37; V. 41; T. 42; S. A. 37; Q. 40; W. A. 48; N. Z. 40.

Continuing authority of partners for purposes of winding-up. **38.** After the dissolution of a partnership the authority of each partner to bind the firm, and the other rights and obligations of the partners continue, notwithstanding the dissolution, so far as may be necessary to wind up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise: Provided that the firm is in no case bound by the acts of a partner who has become bankrupt; but this proviso does not effect¹⁾ the liability of any person who has, after the bankruptcy, represented himself or knowingly suffered himself to be represented as a partner of the bankrupt. — E. § 38; V. 42; T. 43; S. A. 38; Q. 41; W. A. 49; N. Z. 41.

Rights of partners to application of partnership property. **39.** On the dissolution of a partnership every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm; and for that purpose any partner or his representatives may, on the termination of the partnership, apply to the Court to wind up the business and affairs of the firm. — E. § 39; V. 43; T. 44; S. A. 39; Q. 42; W. A. 50; N. Z. 42.

Apportionment of premium when partnership prematurely dissolved. **40.** Where one partner has paid a premium to another on entering into a partnership for a fixed term, and the partnership is dissolved before the expiration of that term otherwise than by the death of a partner, the Court may order the repayment of the premium, or of such part as it thinks just, having regard to the terms of the partnership contract, and to the length of time during which the partnership has continued; unless: a) The dissolution is, in the judgment of the Court, wholly or chiefly due to the misconduct of the partner who paid the premium, or b) The partnership has been dissolved by an agreement containing no provision for a return of any part of the premium. — E. § 40; V. 44; T. 45; S. A. 40; Q. 43; W. A. 53; N. Z. 43.

Rights where partnership dissolved for fraud or misrepresentation. **41.** Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled: a) To a lien on, or right of retention of, the surplus of the partnership assets, after satisfying the partnership liabilities, for any sum of money paid by him for the purchase of a share in the partnership and

¹⁾ *Sic*; obviously "affect".

for any capital contributed by him; and is b) To stand in the place of the creditors of the firm for any payments made by him in respect of the partnership liabilities; and c) To be indemnified by the person guilty of the fraud or making the representation against all the debts and liabilities of the firm. — E. § 41; V. 45; T. 46; S. A. 41; Q. 44; W. A. 54; N. Z. 44.

Right of outgoing partner in certain cases to share profits made after dissolution. 42. 1. Where any member of a firm has died, or otherwise ceased to be a partner, and the surviving and continuing partners carry on the business of the firm with its capital or assets without any final settlement of accounts as between the firm and the outgoing partner, or his estate, then, in the absence of any agreement to the contrary, the outgoing partner or his estate is entitled, at the option of himself or his representatives, to such share of the profits made since the dissolution as the Court may find to be attributable to the use of his share of the partnership assets, or to interest at the rate of six per centum per annum on the amount of his share of the partnership assets. 2. Provided that where, by the partnership contract, an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section. — E. § 42; V. 46; T. 47; S. A. 42; Q. 45; W. A. 55; N. Z. 45.

Retiring or deceased partner's share to be a debt. 43. Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner, or the representatives of a deceased partner, in respect of the outgoing or deceased partner's share, is a debt accruing at the date of the dissolution or death. — E. § 43; V. 47; T. 48; S. A. 43; Q. 46; W. A. 56; N. Z. 46.

Rule for distribution of assets on final settlement of accounts. 44. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed: 1. Losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits. 2. The assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order: a) In paying the debts and liabilities of the firm to persons who are not partners therein; b) In paying to each partner ratably what is due by the firm to him for advances as distinguished from capital; c) In paying to each partner ratably what is due from the firm to him in respect of capital; d) The ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible. — E. § 44; V. 48; T. 49; S. A. 44; Q. 47; W. A. 57; N. Z. 47.

Supplemental.

Definition of "Court" and "business". 45. In this Act unless the contrary intention appears: The expression "Court" includes every Court and Judge having jurisdiction in the case. The expression "business" includes every trade, occupation, or profession. — E. § 45; V. 4; T. 4; S. A. 45; Q. 3; W. A. 3; N. Z. 2.

Saving for rules of equity and common law. 46. The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act. — E. § 46; V. 4; T. 5; S. A. 46; Q. 48; W. A. 6; N. Z. 48.

Repeal of 30 Vic. No. 14. 47. The Act thirtieth Victoria number fourteen is hereby repealed. — E. § 47; V. 3; T. 3; S. A. 47; Q. 4; W. A. 5; N. Z. 1.

Short title. 48. This Act may be cited as the *Partnership Act, 1892*. — E. § 48; V. 1; T. 1; S. A. 48; Q. 1; W. A. 1; N. Z. 1.

2. Victoria. 55 Vic. No. 1222. An Act to declare and amend the law of Partnership (14th December, 1891).

Short title. 1. This Act may be cited as the *Partnership Act, 1891*. — E. § 48; N. S. W. 48; T. 1; S. A. 48; Q. 1; W. A. 1; N. Z. 1.

Commencement of Act. 2. This Act shall come into operation on the first day of January, One thousand eight hundred and ninety-two.

Repeal of Act No. 1122. 3. The *Partnership Act, 1890*, is hereby repealed. — E. § 47; N. S. W. 47; T. 3; S. A. 47; Q. 4; W. A. 5; N. Z. 1.

4. 1. = N. S. W. § 45. 2. = N. S. W. § 46.

Nature of partnership.

5. = N. S. W. § 1, except that in (1) the word “subsists” is substituted for “exists”; and that (2) (a) of the Victorian Act reads: “Registered as a company under any Act for the time being in force and relating to the registration, constitution, or incorporation of companies;” and (2) (b) reads: “Formed or incorporated by or in pursuance of any Act or Letters Patent or Royal Charter.” — E. § 1; N. S. W. 1; T. 6; S. A. 1; Q. 5; W. A. 4, 7; N. Z. 4. — The ordinary principles of the law of contracts apply to the creation of the partnership relation. The terms must not be so uncertain that they can not be enforced. — *Cp. Le Roy v. Herrenschildt*, 2 V. L. R. (E.) 189. The object must be to carry on business as partners, not in some other capacity. Thus promoters of a company are not partners. — *Wilkins v. Davies*, 16 V. L. R. 70; 11 A. L. T. 141. An agreement for a partnership to deal in land is not within the Statute of Frauds (29 Car. 2, c. 3, § 4), and need not be in writing. — *Ford v. Comber*, 16 V. L. R. 540; 12 A. L. T. 64. In appropriate cases specific performance of a contract of partnership may be decreed, but not where the decree would be contrary to ordinary equitable principles. — *Le Roy v. Herrenschildt*, 2 V. L. R. (E.) 189.

6. = N. S. W. § 2, except that in (1) the words “common property” are added after the words “joint property”, and that in (3) (a) the word “amount” is substituted for the word “demand”. — E. § 2; N. S. W. 2; T. 7; S. A. 2; Q. 6; W. A. 8; N. Z. 5. — A participation in the profits of a concern under an agreement that the sum paid in was not to be repaid, but that the person paying in the sum was not to be liable for losses, nor held out to the world as a partner, creates a partnership. — *In re Ruddock*, 5 V. L. R. (E.) 297; 1 A. L. T. 25. *Sed quare*. But a loan made under stipulation that the business is to be carried on in a particular manner does not necessarily create a partnership. — *In re Butchart*, 2 W. W. & a’B. (I. E. & M.) 8, 12. (Decided under a statute, but within the scope of § 6). An agreement that the owner of premises shall receive half of the monthly profits of a business in lieu of rent held not to constitute a partnership. — *Reg. v. Willis*; *Ex parte Martin*, 5 V. L. R. (L.) 149. For an example of joint ownership held not to be a partnership, see *Turnbull v. Ah Mouy*, 2 A. J. R. 40.

7. = N. S. W. § 3, except that the words “adjudged an insolvent” are substituted for the words “adjudged a bankrupt”.

8. = N. S. W. § 4, except that the word “purposes” is substituted for the word “purpose”.

Relations of partners to persons dealing with them.

9. = N. S. W. § 5. — E. § 5; N. S. W. 5; T. 10; S. A. 5; Q. 8; W. A. 26; N. Z. 8. — A partner in a trading partnership has implied authority to borrow money. But, *semble*, not at an exorbitant rate of interest. — *Goldberg v. Jenkins*, 15 V. L. R. 36. The same authority held to exist in a partner in a squatting business. — *Glass v. Higgins*, 2 V. R. (E.) 28. Partner can mortgage personalty belonging to the partnership. — *Williamson v. Cunningham*, 3 W. W. & a’B. (E.) 188. But no implied authority exists to make an assignment of partnership property for the benefit of creditors. — *Butler v. Duckett*, 17 V. L. R. 439; 12 A. L. T. 202. Of course all authority ceases upon dissolution of the partnership. — *Paterson v. Hughes*, 2 V. R. (L.) 148; 2 A. J. R. 96.

10. = N. S. W. § 6, except that the words “provided that” are omitted.

11. = N. S. W. § 7.

12. = N. S. W. § 8, except that the words “placed on the power” are substituted for the words “placed upon the power”.

13. = N. S. W. § 9.

14. = N. S. W. § 10, except that the words “partner in the firm” are substituted for the words “partner of the firm”.

15. = N. S. W. § 11, except that in (b) the word “where” is substituted for the word “when”.

16. = N. S. W. § 12.

17. = N. S. W. § 13, except that the words "on the account" are substituted for the words "on account".

18. = N. S. W. § 14, except that the words "provided that" are omitted.

19—20. = N. S. W. § 15—16.

21. = N. S. W. § 17, except that in (2) the words "debts or obligations" are substituted for "debt and obligation"; and that in (3) the word "express" is substituted for "expressed".

22. = N. S. W. § 18, except that the words "in respect of the transactions of which" are substituted for the words "in respect of whose transactions". — E. § 18; N. S. W. 18; T. 23; S. A. 18; Q. 21; W. A. 25; N. Z. 21. — See *Huon v. Dougherty*, 20 V. L. R. 30; 15 A. L. T. 221.

Relations of partners to one another.

23. = N. S. W. § 19, except that the word "express" is substituted for the word "expressed".

24. = N. S. W. § 20, except that in (2) the words "provided that" are omitted, and that the words "as necessary" are substituted for the words "as is necessary"; and that the wording of (3) is as follows: 3. Where co-owners of an estate or interest in any land not being itself partnership property are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land or estate so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land or estate first mentioned at the date of the purchase.

25. = N. S. W. § 21, except that the words "on the account" are substituted for the words "on account".

Conversion into personal estate of land held as partnership property. 26. Where land or any interest therein has become partnership property it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner) as personal estate. — E. § 22; N. S. W. 22; T. 27; S. A. 22; Q. 25; W. A. 32; N. Z. 25.

27. = N. S. W. § 23, except that in (2) the words "or a county court" are added after the words "judge thereof", and in (3) the word "the" is omitted before "case".

28. = N. S. W. § 24, except that the beginning words are "the interests", instead of "the interest"; "express" is substituted for "expressed"; in (3) "advance" for "advances". — E. § 24; N. S. W. 24; T. 29; S. A. 24; Q. 27; W. A. 34; N. Z. 27. — Where a partnership is shown to exist the presumption is that the partners are entitled to equal shares in capital and profits. — *Kilpatrick v. Mackay*, 4 V. L. R. (E.) 28. Where a partnership agreement between three persons provided that no partner could dispose of his interest in the partnership except with the consent of a majority of the partners it was held that where one of the partners was insane the partner desiring to dispose of his share and the third partner together constituted a majority within the meaning of the agreement. — *In re Anderson*, 5 V. L. R. (E.) 133. — For a case where there was sufficient evidence to show an implied agreement that capital contributed by one partner should be repaid before division of profits after dissolution, see *Kelly v. Tucker*, 5 C. L. R. 1.

29. = N. S. W. § 25.

30. = N. S. W. § 26, except that in (2) the words "in writing" are added after the word "notice".

31—32. = N. S. W. § 27—28.

33. = N. S. W. § 29, except "from any use" is substituted for "for any use".

34. = N. S. W. § 30. — E. § 30; N. S. W. 30; T. 35; S. A. 30; Q. 33; W. A. 41; N. Z. 33. — The duty not to compete ceases immediately upon dissolution. It seems that towards the end of the term, a dissolution being in contemplation, a partner may announce the intended dissolution and his intention to carry on a similar business, and to solicit the custom of persons theretofore dealing with the firm. — *Cornwall v. Hicks*, 5 A. J. R. 61. Where a partnership is dissolved by an assignment to trustees upon trust for creditors, one of the partners may bid in the assets at the sale, in the same manner as a stranger. — *Muir v. McGregor*, 3 A. J. R. 14.

35. = N. S. W. § 31, except that in (1) the words "require any accounts" are substituted for the words "require any account"; and that in (2) the beginning words are "in the case" instead of "in case".

Dissolution of partnership and its consequences.

36. = N. S. W. § 32, except that the words "if no date is so mentioned" are substituted for the words "if no date is mentioned".

37. = N. S. W. § 33, except that the word "insolvency" is substituted for the word "bankruptcy". — E. § 33; N. S. W. 33; T. 38; S. A. 33; Q. 36; W. A. 44; N. Z. 36. — Upon dissolution of a partnership by death of one of the partners, the surviving partners become trustees of the interest of the deceased partner. In order to pass the property in the partnership assets all of the surviving partners must concur in the assignment. All that one of such partners can do when acting alone is to sell an equitable right to a share (commensurate with the vendor's interest) in the surplus of assets over liabilities. — *Rees v. Duncan*, 25 V. L. R. 520; 21 A. L. T. 212; 6 A. L. R. 44. The older cases have held that a partnership is dissolved by the marriage of a female partner. — *Cp. Johnson v. Colclough*, 4 A. J. R. 53; 4 A. J. R. 131. And by an assignment of the partnership property for the benefit of creditors. — *Muir v. M'Gregor*, 3 A. J. R. 14. But not by a mere refusal to acknowledge the existence of a partnership relation. — *Kin Sing v. Won Paw*, 1 W. & W. (L.) 303. A working partnership, it has been held, may be dissolved by one partner ceasing to do his share of the work. — *Jorgensen v. Boyce*, 22 V. L. R. 408.

38. = N. S. W. § 34.

39. = N. S. W. § 35, except that subsection (a) reads as follows: a) When a partner is found lunatic by inquisition, or is shown to the satisfaction of the court to be of permanently unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner. — E. § 35; N. S. W. 35; T. 40; S. A. 35; Q. 38; W. A. 46; N. Z. 38. — Where plaintiff is himself at fault the court may refuse to decree dissolution. — *Mitchell v. Welsh*, 4 A. J. R. 183. An incompatibility of temper of the partners of such degree as to make it impossible to carry on the business successfully or beneficially is a ground for dissolution. — *Knight v. Bell*, 13 V. L. R. 878.

Rights of persons dealing with firm against apparent members of firm.

40. 1. Where a person deals with a firm after a change in its constitution he is entitled to treat all apparent members of the old firm as still being members of the firm, until he has notice of the change. 2. An advertisement in the *Government Gazette* and in at least one newspaper circulating in each district in which the firm carries on business as to a firm whose principal place of business is in Victoria shall be notice to all persons who had not dealings with the firm before the date of the dissolution or change so advertised. 3. The estate of a partner who dies or who becomes insolvent, or of a partner who not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable for partnership debts contracted after the date of the death, insolvency, or retirement respectively. — E. § 36; N. S. W. 36; T. 41; S. A. 36; Q. 39; W. A. 47; N. Z. 39. — For a case involving the application of the principles announced in subsection (1) see *Brundell v. Alexander*, 12 V. L. R. 908; 8 A. L. T. 130.

Right of partners to notify dissolution. **41.** On the dissolution of a partnership or retirement of a partner, any partner may, but one of such partners shall publicly notify the same in the *Government Gazette*, and in at least one newspaper circulating in each district in which the firm carries on business, and may require the other partner or partners to concur for that purpose in all necessary or proper acts (if any) which can not be done without his or their concurrence. — E. § 37; N. S. W. 37; T. 42; S. A. 37; Q. 40; W. A. 48; N. Z. 40.

42. = N. S. W. § 38, except that the words "insolvent" and "insolvency" are substituted for the words "bankrupt" and "bankruptcy", wherever they occur.

43. = N. S. W. § 39.

44. = N. S. W. § 40, except that the word "thereof" is added after the words "or of such part".

45. = N. S. W. § 41.

46. = N. S. W. § 42, except that in (1) the words "surviving or continuing partners" are substituted for the words "surviving and continuing partners", and the words "at the rate of seven per centum" for the words "at the rate of six per centum".

47—48. = N. S. W. § 43—44, except that in § 48 (b) (2) the words are "from the firm" instead of "by the firm".

3. Tasmania. a) 55 Vic. No. 3. An Act to declare and amend the law of Partnership (13th August, 1891).

Preliminary.

Short title. 1. This Act may be cited as *The Partnership Act, 1891*. — E. § 48; N. S. W. 48; V. 1; S. A. 48; Q. 1; W. A. 1; N. Z. 1.

2. = V. § 2.

Repeal. 3. The Act mentioned in the Schedule to this Act is hereby repealed to the extent mentioned in the third column of that Schedule. — E. § 47; N. S. W. 47; V. 3; S. A. 47; Q. 4; W. A. 5; N. Z. 1.

Interpretation. 4. In this Act unless the contrary intention appears: The expression "Court" means the Supreme Court, or a Judge thereof sitting in Chambers or otherwise. The expression "business" includes every trade, occupation, or profession. — E. § 45; N. S. W. 45; V. 4; S. A. 45; Q. 3; W. A. 3; N. Z. 3.

5. = N. S. W. § 46, except that the word "of" is omitted before the words "common law".

Nature of partnership.

6. = N. S. W. § 1, except that the Tasmanian Act substitutes in (1) the word "subsists" for the word "exists"; adds in (2) (a) the figures "1869" after "Companies Act", and omits "of Parliament" after "other Act", and adds a new subsection: c) A mining company registered under *The Mining Companies Act, 1884*, or any other Act for the time being in force and relating to the registration of companies carrying on mining operations.

7. = V. § 6.

8—9. = N. S. W. § 3—4, except that in § 9 the Tasmanian Act reads "purposes" instead of "purpose".

Relations of partners to persons dealing with them.

10—23. = N. S. W. § 5—18, except as follows: in § 10 the word "shall" is inserted between the words "member" and "bind"; in § 13 the wording is "placed on the power", instead of "placed upon the power"; in § 15, "partner in the firm", instead of "partner of the firm"; in § 16 (b) (= N. S. W. § 11) "where a firm", instead of "when a firm"; in § 22 (2) (= N. S. W. § 17 [2]) "debts or obligations", instead of "debt and obligation"; in § 23 (= N. S. W. § 18) "in respect of the transactions of which", instead of "in respect of whose transactions".

Relations of partners to one another.

24. = V. § 23.

25. 1—2. = N. S. W. § 20 (1—2), except that in (2) the words "as necessary" are substituted for the words "as is necessary". 3. = V. § 24 (3).

26—27. = N. S. W. § 21—22.

28. = N. S. W. § 23, except that in (2) the words "or a court having jurisdiction under the *Debtors Act, 1870*", are added after the words "or a judge thereof"; and that in (3) the word "the" is omitted before "case". — E. § 23; N. S. W. 23; V. 27; S. A. 23; Q. 26; W. A. 33; N. Z. 26. — Thus, where the creditors of one partner, in respect of debts due by such partner individually, sought to enter caveats against the registration of a bill of sale proposed to be given by partners over the partnership assets, it was held that such caveats must be withdrawn, it being unfair for the creditors of one partner to stop dealings with the firm property to the disadvantage of the firm's creditors. — *Re Lewin*, 2 N. & S. (Tas.) 72.

29—30. = V. § 28—29, except that in § 29 (3) the word "six" is substituted for the word "seven".

31. = V. § 30.

32—36. = V. § 31—35.

Dissolution of partnership and its consequences.

37. = N. S. W. § 32, except that subsection (c) reads as follows: c) If entered into for an undefined time, by any partner giving notice of his intention to dissolve the partnership; and that the words "if no date is so mentioned" are substituted for the words "if no date is mentioned".

38—39. = N. S. W. § 33—34.

40. = V. § 39.

41. 1. = V. § 40 (1). 2. An advertisement in *The Hobart Gazette* shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised. 3. = N. S. W. § 36 (3).

42—44. = N. S. W. § 37—39.

45. = V. § 44.

46. = N. S. W. § 41.

47. = N. S. W. § 42, except that in (1) the words “surviving or continuing partners” are substituted for the words “surviving and continuing partners”.

48—49. = V. § 47—48.

Schedule.

Act Repealed.

Date.	Title of Act.	Extent of Repeal.
22 Vic. No. 3.	The Mercantile Law Amendment Act, 1856.	Sec. II.

b) 8 Edw. 7, No. 6. An Act to establish Limited Partnerships (12th October, 1908).¹⁾

Short title. 1. This Act may be cited for all purposes as *The Limited Partnerships Act, 1908*. — E. § 1.

Commencement of Act. 2. This Act shall come into operation on the first day of January, One thousand nine hundred and nine. — E. § 2; W. A. § 2.

Interpretation of terms. 3. In the construction of this Act the following words and expressions shall have the meanings respectively assigned to them in this section, unless there be something in the subject or context repugnant to such construction: “Firm,” “firm name,” and “business” have the same meanings as in *The Partnership Act, 1891*; “General partner” shall mean any partner who is not a limited partner as defined by this Act. — E. § 3; W. A. § 3.

Definition and constitution of limited partnership. 4. 1. From and after the commencement of this Act limited partnerships may be formed in the manner and subject to the conditions by this Act provided. 2. A limited partnership shall not consist, in the case of a partnership carrying on the business of banking, of more than ten persons, and, in the case of any other partnership, of more than twenty persons, and must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed. 3. A limited partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive back any such part shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back. 4. A body corporate may be a limited partner. — E. § 4; Q. 53, 54; W. A. § 4; N. Z. 49, 50.

Registration of limited partnership required. 5. Every limited partnership must be registered as such in accordance with the provisions of this Act, or in default thereof it shall be deemed to be a general partnership, and every limited partner shall be deemed to be a general partner. — E. § 5; W. A. § 5.

Modifications of general law in case of limited partnerships. 6. 1. A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm. Provided that a limited partner may by himself or his agent at any time inspect the books of the firm, and examine into the

¹⁾ The references in the notes are to (E.) the English *Limited Partnerships Act, 1907* (7 Edw. 7, c. 24) and to the Queensland *Mercantile Act, 1867* (31 Vic. No. 36) the Western Australia *Limited Partnerships Act, 1909* (No. 17 of 1909), and the New Zealand *Partnerships Act, 1908* (No. 139) reprinted *infra*.

state and prospects of the partnership business, and may advise with the partners thereon. If a limited partner takes part in the management of the partnership business he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner. 2. A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the court unless the lunatic's share cannot be otherwise ascertained and realised. 3. In the event of the dissolution of a limited partnership its affairs shall be wound up by the general partners unless the court otherwise orders. 4. Applications to the court to wind up a limited partnership shall be by petition under *The Companies Act, 1869*, and the provisions of that Act and its amendments relating to the winding-up of companies by the court, and of the rules made thereunder (including provisions as to fees), shall, subject to such modifications (if any) as the judges of the Supreme Court may by rules provide, apply to the winding-up by the court of limited partnerships, with the substitution of general partners for directors. 5. Subject to any agreement expressed or implied between the partners: I. Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners; II. A limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor; III. The other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt; IV. A person may be introduced as a partner without the consent of the existing limited partners; V. A limited partner shall not be entitled to dissolve the partnership by notice. — E. § 61; Q. §§ 56, 57; W. A. § 6; N. Z. §§ 53, 54.

Law as to private partnerships to apply where not excluded by this Act. 7. Subject to the provisions of this Act, *The Partnership Act, 1891*, and the rules of equity and of common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the lastmentioned Act, shall apply to limited partnerships. — E. § 7; W. A. § 7.

Manner and particulars of registration. 8. The registration of a limited partnership shall be effected by sending by post or delivering to the Registrar a statement, signed by the partners, containing the following particulars: I. The firm name; II. The general nature of the business; III. The principal place of business; IV. The full name of each of the partners; V. The term, if any, for which the partnership is entered into, and the date of its commencement; VI. A statement that the partnership is limited, and the description of every limited partner as such; VII. The sum contributed by each limited partner, and whether paid in cash or how otherwise. Every such statement shall be accompanied by the prescribed fee. — E. § 8; Q. § 57; W. A. § 8; N. Z. § 58.

Registration of changes in partnerships. 9. 1. If during the continuance of a limited partnership any change is made or occurs in: I. The firm name; II. The general nature of the business; III. The principal place of business; IV. The partners or the name of any partner; V. The term or character of the partnership; VI. The sum contributed by any limited partner; VII. The liability of any partner by reason of his becoming a limited instead of a general partner, or a general instead of a limited partner: A statement, signed by the firm, specifying the nature of the change shall within seven days be sent by post or delivered to the Registrar. Every such statement shall be accompanied by the prescribed fee. 2. If default is made in compliance with the requirements of this section each of the general partners shall, on conviction under *The Magistrates Summary Procedure Act*, be liable to a fine not exceeding one pound for each day during which the default continues. — E. § 9; W. A. § 9.

Registration of Firms Act, 1899, not to apply. 10. The provisions of *The Registration of Firms Act, 1899*, shall not apply in the case of a limited partnership registered under this Act, whilst it continues to be a limited partnership as defined by this Act.

Advertisement in Gazette of statement of general partner becoming a limited partner and of assignment of share of limited partner. 11. Notice of any arrangement or transaction: I. Under which any person will cease to be a general partner in any firm, and will become a limited partner in that firm; or II. Under which the

share of a limited partner in a firm will be assigned to any person: Shall be forthwith gazetted, and until notice of the arrangement or transaction is gazetted the arrangement or transaction shall, for the purposes of this Act, be deemed to be of no effect. — E. § 10; Q. § 58; W. A. § 10; N. Z. § 60.

Making false returns to be a misdemeanour. 12. Every one commits a misdemeanour, and shall be liable to imprisonment with hard labour for a term not exceeding two years, who makes, signs, sends, or delivers for the purpose of registration under this Act any false statement known by him to be false. — E. § 12; Q. § 57; W. A. § 12; N. Z. § 55.

Registrar to file statement and issue certificate of registration. 13. On receiving any statement made in pursuance of this Act, together with the prescribed fees, the Registrar shall cause the same to be filed, and he shall send by post to the firm from whom such statement shall have been received a certificate of the registration thereof. — E. § 13; W. A. § 13.

Register and index to be kept. 14. The Registrar of Companies appointed under *The Companies Act, 1869*, shall be the Registrar of limited partnerships, and his office for the registration of companies shall be the office for the registration of limited partnerships, and the Registrar shall keep at his register office, in proper books to be provided for the purpose, a register and an index of all the limited partnerships registered as aforesaid, and of all the statements registered in relation to such partnerships. — E. § 14; W. A. §§ 14, 15.

Inspection of statements registered. 15. 1. Any person may inspect the statements filed by the Registrar in the register office aforesaid; and there shall be paid for every such inspection a fee of one shilling. 2. Any person may require a certificate of the registration of any limited partnership, or a copy of or extract from any registered statement to be certified by the Registrar; and there shall be paid for every such certificate of registration a fee of two shillings and sixpence, and for every such copy or extract a fee at the rate of sixpence for each folio of seventy-two words. 3. A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy under the hand of the Registrar or his chief clerk (whom it shall not be necessary to prove to be the Registrar or chief clerk) shall in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence. — E. § 16; W. A. § 15.

Power to Governor to make regulations. 16. The Governor may from time to time make regulations concerning any of the following matters: I. The fees to be paid to the Registrar under this Act, so that they do not exceed in the case of the original registration of a limited partnership the sum of two pounds, and in any other case the sum of five shillings; II. The duties or additional duties to be performed by the Registrar for the purposes of this Act; III. The forms to be used for the purposes of this Act; IV. Generally, the conduct and regulation of registration under this Act and any matters incidental thereto. — E. § 17; W. A. § 16.

Recovery of penalties. Appeal. 17. 1. All fines or penalties imposed by this Act may be recovered in a summary way before a police magistrate, or any two or more justices, in the mode prescribed by *The Magistrates Summary Procedure Act*. 2. Any person who deems himself aggrieved by any fine or penalty imposed under the authority of this Act may appeal against the same in the manner provided by *The Appeals Regulation Act*.

4. South Australia. 54 & 55 Vic. No. 506. An Act to declare and amend the law of Partnership (14th October, 1891).

Nature of partnership.

1. 1. = V. § 5 (1). 2. But the relation between members of any company or association which is: a) Registered as a company under *The Companies Act, 1864*, or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or b) = N. S. W. § 1 (2) (b).

2. = V. § 6.

3. = N. S. W. § 3, except that the words "being adjudicated insolvent, or taking the benefit of any Act for the relief of insolvent debtors, or" are substituted for the words "being adjudged a bankrupt".

4. = N. S. W. § 4.

Relations of partners to persons dealing with them.

5—7. = N. S. W. § 5—7.

8. = V. § 12.

9. = N. S. W. § 9.

10—13. = V. § 14—17.

14. = N. S. W. § 14, except that in (2) the wording is: "make his executor's or administrator's estate or effects liable, etc." Obviously the clause should read: "make his executors or administrators, estate or effects liable, etc."

15.—18. = V. § 19—22.

Relations of partners to one another.

19. = V. § 23.

20. 1—2. = N. S. W. § 20 (1—2), except that in (2) the words "as necessary" are substituted for the words "as is necessary". 3. = V. § 24 (3), except that the beginning word is "when", instead of "where".

21. = N. S. W. § 21.

22. = V. § 26.

23. = N. S. W. § 23, except that in (2) the words "or a Local Court of full jurisdiction" are added after the words "or a judge thereof", and that in (3) the word "the" is omitted before the word "case".

24—30. = N. S. W. § 24—30.

31. = V. § 35.

Dissolution of partnership and its consequences.

32—33. = V. § 36—37.

34. = N. S. W. § 34.

35. = V. § 39.

36. 1. = V. § 40 (1). 2. = T. § 41 (2), except that the words "the Government Gazette" are substituted for words "The Hobart Gazette". 3. = V. § 40 (3).

37. = N. S. W. § 37, except "necessary or proper", instead of "necessary and proper".

38. = V. § 42.

39. = N. S. W. § 39.

40. = V. § 44.

41. = N. S. W. § 41.

42—44. = V. § 46—48.

Supplemental.

Definitions of "court" and "business". 45. In this Act, unless the contrary intention appears: The expression "Court" means the Supreme Court of the Province, or any Judge thereof. The expression "business" includes every trade, occupation, or profession. — E. § 45; N. S. W. 45; V. 4; T. 4; Q. 3; W. A. 3; N. Z. 3.

46. = N. S. W. § 46.

Repeal. 47. Act No. 4 of 1866—1867, intituled "An Act to amend the Law of Partnership", is hereby repealed. — E. § 47; N. S. W. 47; V. 3; Q. 4; W. A. 5; N. Z. 1.

Short title. 48. This Act may be cited as *The Partnership Act, 1891*. — E. § 48; N. S. W. 48; V. 1; T. 1; Q. 1; W. A. 1; N. Z. 1.

5. Queensland. a) 55 Vic. No. 7. An Act to declare and amend the law of Partnership (31th August, 1891).

Short title. 1. This Act may be cited as *The Partnership Act of 1891*. — E. § 48; N. S. W. 48; V. 1; S. A. 48; W. A. 1; N. Z. 1.

2. = V. § 2.

Interpretation clause. 3. In the interpretation of this Act, unless the context otherwise requires: The term "Court" includes every court and judge having

jurisdiction in the case; The term "business" includes every trade, occupation, or profession; Persons who have entered into partnership with one another are for the purposes of this Act called collectively a firm, and the name under which their business is carried on is called the firm-name. — E. § 4, 45; N. S. W. 4, 45; V. 4, 8; T. 4, 9; S. A. 4, 45; W. A. 3, 10; N. Z. 3, 7.

Repeal, Schedule. 4. The Act mentioned in the Schedule to this Act is repealed to the extent mentioned in the third column of that Schedule. — E. § 47; N. S. W. 47; V. 3; T. 3; S. A. 47; W. A. 5; N. Z. 1.

Nature of partnership.

Definition of partnership. 5. 1. Partnership is the relation which subsists between persons carrying on a business in common with a view of profit. 2. But the relation between members of any company or association which is; a) Registered as a company under *The Companies Act, 1863*, or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or b) Formed or incorporated by or in pursuance of any other Act of Parliament or Letters Patent, or Royal Charter: Is not a partnership within the meaning of this Act. 3. A limited partnership formed under the provisions of *The Mercantile Act of 1867* is a partnership within the meaning of this Act, and the rules of law declared by this Act apply to such a limited partnership except so far as the express provisions of that Act are inconsistent with such rules. — E. § 1; N. S. W. 1; V. 5; T. 6; S. A. 1; W. A. 4, 7; N. Z. 4, 49. — The provisions of *The Mercantile Act of 1867* (31 Vic. No. 36) relating to partnership (being § 53—68 of that Act) are given *infra*.

Rules for determining existence of partnership. 6. In determining whether a partnership does or does not exist, regard shall be had to the following rules: 1. Joint tenancy, tenancy in common, joint property, common property, or part ownership does not of itself create a partnership as to anything held or owned jointly or in common, whether the tenants or owners do or do not share any profits made by the use thereof. 2.—3. = V. § 6 (2—3). — Where property partly freehold and partly leasehold is held in common by partners and used for partnership purposes, but not as an asset of the partnership, it is regarded as realty, and the Statute of Frauds (29 Car. 2, c. 3) applies. — *Meyenberg v. Pattison et al.*, 3 Q. L. J. 184.

7. = N. S. W. § 3, except that the words "last preceding section" are substituted for the words "last foregoing section", and the words "adjudicated insolvent" are substituted for the words "adjudged a bankrupt".

Relations of partners to persons dealing with them.

8. = N. S. W. § 5.

9. = N. S. W. § 6, except that the words "but this section does not affect" are substituted for the words "provided that this section shall not affect".

10. = N. S. W. § 7.

11. = N. S. W. § 8, except that the words "placed on the power" are substituted for the words "placed upon the power", and the word "restriction" is substituted for "restrictions".

12. = N. S. W. § 9.

13—14. = V. § 14—15.

15. = N. S. W. § 12.

16. = V. § 17.

17. = N. S. W. § 14, except that in (2) the words "does not of itself" are substituted for the words "shall not of itself". — E. § 14; N. S. W. 14; V. 18; S. A. 14; W. A. 21; N. Z. 17. — B. being about to reside in Brisbane arranged with T. and M. at Sydney that the two latter should forward to him certain consignments of goods for sale at Brisbane, B. to retain half of the profits for his own use. Goods were consigned to B. on this basis for about twelve months. M. also advanced certain sums to B. to enable him to carry on the business at Brisbane. B. represented himself at Brisbane as resident partner in the firm of B., T. and M. M. was aware of the representation, but took no steps to prevent or contradict it. It was held that the above facts were not sufficient to constitute a continuing partnership in the Brisbane business between the three persons. — *Re Buchanan & Co., Beor (Qd.)* I, 67; 4 S. C. R. (Qd.) 202. But such facts may be sufficient to constitute a "holding out".

18—19. = N. S. W. § 15—16.

20. = V. § 21.

Revocation of continuing guaranty by change in firm. 21. A continuing guaranty given either to a firm or to a third person in respect of the transactions of a

firm is, in the absence of agreement to the contrary, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guaranty was given. — E. § 18; N. S. W. 18; V. 22; T. 23; S. A. 18; W. A. 25; N. Z. 21.

Relations of partners to one another.

22. = V. § 23.

23. = N. S. W. § 20, except that in (2) the words "as necessary" are substituted for the words "as is necessary", and that the wording of subsection (3) is as follows: 3. Where co-owners of an estate or interest in any land not being itself partnership property are partners as to profits made by the use of that land, and purchase other land out of the profits to be used in like manner, the land so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land first mentioned at the date of the purchase.

24. = N. S. W. § 21.

Conversion into personal estate of land held as partnership property. 25. Where land has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the representatives of a deceased partner, as personal and not real estate. — E. § 22; N. S. W. 22; V. 26; T. 27; S. A. 22; W. A. 32; N. Z. 25.

26. = N. S. W. § 23, except that in (2) the words "Supreme" and "or a judge thereof" are omitted, and that in (3) the word "the" is omitted before the word "case".

27. = V. § 28, except that in (3) the word "six" is substituted for the word "seven".

28. = N. S. W. § 25, except that the word "a" is substituted for the word "no" and the words "can not" for the word "can".

29. = V. 30.

30—33. = N. S. W. § 27—30.

34. = N. S. W. § 31, except that in (1) the words "require any accounts" are substituted for the words "require any account", and the words "except in the case of fraud" are inserted after the words "the assignee must".

Dissolution of partnership and its consequences.

35—36. = V. § 36—37.

37. = N. S. W. § 34.

38. = N. S. W. § 35, except that subsection (a) reads as follows: a) when a partner is shown to the satisfaction of the court to be of permanently unsound mind, in which case the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene as by any other partner. — E. § 35; N. S. W. 35; V. 39; T. 40; S. A. 35; W. A. 46; N. Z. 38. — For a case where a suit for damages for breach of a partnership agreement was treated as a suit for dissolution, see *Sheaffe v. Hungerford*, 1 Q. L. J. (Supp.) 51. For procedure where a partnership is carried on in two different countries under different firm names, see *Hoyer v. Tiegs*, (1902) S. R. (Qd.) Note No. 39. For a case where an interim injunction was granted in a suit for dissolution, see *Shanks v. Shanks*, (1902) S. R. (Q.) Note No. 59.

39. 1. = V. § 40 (1). 2. An advertisement in the *Gazette* shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised. 3. = V. § 40 (3).

40. = N. S. W. § 37, except that the words "necessary or proper" are substituted for the words "necessary and proper".

41. = V. § 42.

42. = N. S. W. § 39.

43. = V. § 44.

44. = N. S. W. § 41.

45. = N. S. W. § 42, except that in (1) the words "surviving or continuing partners" are substituted for the words "surviving and continuing partners", and the words "at the rate of five per cent." for the words "at the rate of six per centum".

46. = N. S. W. § 43.

47. = N. S. W. § 44, except that in (b) (2) the words are "from the firm", instead of "by the firm".

Saving.

48. = N. S. W. § 46.

Schedule.

Enactment Repealed.

Session and Number.	Short Title.	Extent of Repeal.
31 Vic. No. 22.	Statute of Frauds and Limitations of 1867.	Section 7.

b) 31 Vic. No. 36. An Act to consolidate and amend the laws relating to Mercantile Matters (§§ 53—68— Limited Partnership¹⁾ 28th December, 1867).

Limited partnership.

Limited partnerships may be formed except for banking and insurance. 53. Limited partnerships may be formed for the transaction of agricultural, mining, mercantile, mechanical, manufacturing, or other business by any number of persons, upon the terms and subject to the conditions and liabilities hereinafter prescribed. Provided that nothing herein shall authorise any such partnership for the purpose either of banking or insurance. — E. Lim. Part. Act, § 4 (1, 2); W. A. § 4; T. 4; N. Z. 49.

General and special partners and their liabilities. 54. Every such partnership may consist of general partners who shall be jointly and severally responsible as general partners are now by law, and of persons to be called special partners who shall contribute to the common stock specific sums in money as capital beyond which they shall not be responsible for any debt of the partnership, except in the cases hereinafter provided for. — E. Lim. Part. Act, § 4 (2); W. A. § 4; T. 4; N. Z. 50.

Certificate to be made by the partners specifying names capital etc. 55. All the persons forming any such partnership shall before commencing business sign a certificate containing the style of the firm under which the partnership is to be conducted, the names and places of residence of all the partners distinguishing the general from the special partners, the amount of capital which each special partner contributes, and also, if any, the amount contributed by the general partners to the common stock, the general nature of the business to be transacted, the principal place at which it is to be transacted, the time when such partnership is to commence and when it is to terminate. — E. Lim. Part. Act, § 8; W. A. § 8; T. 8; N. Z. 51.

Style of partnership. 56. Such style or firm shall contain the names of general partners only, or the name of one such partner with in either case the addition of the words "and another" or "and others" and the general partners only shall transact the business of the partnership, and if in the carrying on of such business or in any contract connected therewith the name of any special partner shall be used with his consent or privity, or if he shall personally make any contract respecting the concerns of the partnership, every such special partner shall be deemed to be a general partner with respect to the contract or matter in which his name has been so used or as to which he shall have so contracted. — E. Lim. Part. Act, § 6 (1); W. A. § 6 (1); T. 6 (1); N. Z. 52.

¹⁾ In so far as they are applicable the provisions of *The Partnership Act of 1891* govern limited partnerships. — Q. Partnership Act, 1891. § 5 (3). Cp. E. Limited Partnerships Act, 1907, § 7. The references in the annotations are to the English *Limited Partnerships Act, 1907* (7 Edw. 7, c. 24), to the Tasmanian *Limited Partnerships Act, 1908*, *supra*, the Western Australian *Limited Partnerships Act, 1909*, *infra*, and to the New Zealand *Partnership Act, 1908*, *infra*.

Certificate to be acknowledged and recorded. If false liability attaches. 57. No such partnership shall be deemed formed until such certificate as aforesaid shall have been acknowledged by each partner before some justice of the peace, and registered in the office of the registry of deeds in Brisbane in a book to be kept for that purpose open to public inspection, and if any false statement shall be made in any such certificate, all the persons interested in the partnership shall be liable for all the engagements thereof as general partners. Provided that no clerical error or matter not of substance shall be deemed false within the meaning of this section, unless some person may have been prejudiced thereby, in which case the special partners shall be liable to the person so prejudiced. — E. Lim. Part. Act, § 8, 12; T. 8, 12; W. A. §§ 8, 12; N. Z. 54.

Certificate to be published for four weeks. 58. A copy of such certificate shall for four weeks next after such registration be published once at least in the *Gazette*, and in some newspaper printed nearest to the intended principal place of business of the partnership, and in case such publication be not so made the partnership shall be deemed general. — E. Lim. Part. Act, § 10; N. Z. 56.

Duration of partnership limited. 59. No partnership under this Act shall be entered into for a longer period than seven years, but such partnership may be renewed at the end of that period, or at the termination of any shorter period for which a partnership may be formed, provided that the partners sign a fresh certificate in the terms of this Act, and acknowledge and register the same in the same manner as if the partnership were an original partnership with limited liability. — N. Z. 57.

Provision for renewal of partnership. 60. Upon every renewal or continuation of a limited partnership beyond the time originally agreed upon for its duration a certificate thereof shall be signed, acknowledged, registered, and published in like manner as the original certificate, and every partnership which shall be renewed or continued otherwise than in conformity with the provisions of this section shall be deemed general. — N. Z. 58.

Capital stock not to be withdrawn. 61. During the continuance of any partnership under the provisions of this Act no part of the certified capital thereof shall be withdrawn nor shall any division of interest or profit be made so as to reduce such capital below the aggregate amount stated in the certificate, and if any part of such capital shall be so withdrawn, or any such division be made so that at any time during the continuance or at the termination of the partnership the assets shall not be sufficient to pay the partnership debts, the special partners shall severally be liable to refund every sum by them respectively received in diminution of such capital, or by way of such interest or profit, and all such sums may be recovered as money had and received by them respectively to the use of the general partners, and may in the case of any judgment having been obtained against the general partners be recovered by the plaintiff against the special partners, or either of them, by process of execution to be issued under such judgment by leave of the Supreme Court. — E. Lim. Part. Act, § 4 (3); T. 4 (3); W. A. § 4 (3); N. Z. 59, 60.

Suits to be by and against general partners. 62. All suits respecting the business of any partnership established under this Act shall be prosecuted by and against the general partners only, except in the cases in which it is provided by this Act that special partners shall or may be deemed general partners, in which cases every special partner who shall have become liable as a general partner may be joined in the suit as a defendant, at the discretion of the party suing. — N. Z. 61.

Dissolutions how effected. 63. No dissolution of a limited partnership shall take place, except by operation of law, before the time specified in the certificate, unless a notice of such dissolution shall be signed, acknowledged, registered, and published in like manner as the original certificate. — E. Lim. Part. Act, § 6 (2—5); T. 6 (2—5); W. A. § 6 (2—5); N. Z. 62. — This provision does not apply where a suit is brought for the dissolution of a limited partnership. — *Groves v. Mathea*, 9 Q. L. J. 32.

Liabilities not specially provided for. 64. In all cases not hereinbefore otherwise provided for, all the members of a limited partnership shall be subject to the liabilities, and entitled to the rights of general partners. — N. Z. 63.

Accounting. 65. The general partners shall be liable to account to each other and to the special partners for their management of the concern, both in law and equity, as other partners now are by law. — N. Z. 64.

Frauds by partners. 66. Every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage, and shall also be liable to an indictment for a misdemeanor punishable by fine or imprisonment or both in the discretion of the court by which he shall be tried. — N. Z. 65.

Books of account to be kept and to be open to inspection. 67. If the general partners shall not at all times cause regular books of account to be kept, or shall not have the same open at all reasonable times to the inspection of the special partners, such special partners shall on default herein be entitled to have the partnership dissolved and the accounts thereof taken by the Supreme Court. — N. Z. 66.

As to liability of special partners if proper books be not kept or be incorrectly kept. 68. The special partners shall be bound to see that such books are so kept, and if such books shall not be so kept or shall, with the knowledge or privity of the special partners, or any of them, be kept incorrectly, or contain any false or deceptive entries whereby the ascertainment of the matters mentioned in the first part of the sixty-first section hereof shall or may be affected, the certified capital of such special partners or such one or more of them having such knowledge or privity as aforesaid shall as against creditors be deemed to have been withdrawn, and they or he shall be liable accordingly under the provisions of the said sixty-first section hereof. — N. Z. 67.

Commencement of Act. Short title. 69. This Act shall commence on the thirty-first day of December, one thousand eight hundred and sixty-seven and may be referred to as *The Mercantile Act of 1867*.

6. Western Australia. a) 59 Vic. No. 23. An Act to consolidate and amend the law of Partnership (2d October, 1895).

Preliminary.

Short title. 1. This Act may be cited as *The Partnership Act, 1895*. — E. § 48; N. S. W. 48; V. 1; T. 1; S. A. 48; Q. 1; N. Z. 1.

Commencement of Act. 2. This Act shall commence and come into force on the first day of October, One thousand eight hundred and ninety-five.

Interpretation of terms. 3. In this Act the following words and expressions are used in the following senses, unless a different intention appears from the context: "Court" includes every court and judge having jurisdiction in the case. "Business" includes any trade, occupation or profession. "Person" includes any body of persons corporate or unincorporate. "Writing" includes print, and "written" includes printed. "Land" includes hereditaments, corporeal and incorporeal, of any tenure. — E. § 45; N. S. W. 45; V. 4; T. 4; S. A. 45; Q. 3; N. Z. 2.

Application of Act. 4. This Act shall not apply to any company or association which is a) Registered as a company under *The Companies Act, 1893*, or any other Act of Parliament for the time being in force and relating to the registration of joint stock companies; or b) Formed or incorporated by or in pursuance of any other local or foreign Act of Parliament, or Letters Patent, or Royal Charter. — E. § 1; N. S. W. 1; V. 5; T. 6; S. A. 1; Q. 5; N. Z. 4.

Repeal. 5. The Act mentioned in the Schedule of this Act is hereby repealed to the extent mentioned in that Schedule. — E. § 47; N. S. W. 47; V. 3; T. 3; S. A. 47; Q. 4; N. Z. 1.

6. = N. S. W. § 46, except that the word "of" is omitted before the words "common law".

Part I. Nature of Partnership.

Partnership defined. Real intention of parties to be regarded. 7. 1. Partnership is the relation which subsists between persons carrying on a business in common with a view of profit. 2. In deciding whether a partnership does or does not exist in any particular case the court shall have regard to the true contract and intention of the partners as appearing from the whole facts of the case. — E. § 1; N. S. W. 1; V. 5; T. 6; S. A. 1; Q. 5; N. Z. 4. — An agreement for partnership whereby one partner acquires an interest in land held by the other is within the provisions of the Statute of Frauds. — *Caporn v. Dixon*, 6 W. A. L. R. 71.

8. 1—2. = V. § 6 (1—2). 3. = N. S. W. § 2 (3), except that in the first paragraph the words “contingent upon” are substituted for the words “contingent on”; that in (b) the words “of any person” are substituted for the words “of a person”; and that the words “or give him the rights of a partner” are inserted at the end of the subsection; and that in (d) the words “at the time of the advance entered into” are inserted after the words “provided that the contract is”.

9. = N. S. W. § 3, except that the words “whether in writing or otherwise” are inserted after the words “foregoing section”, and the words “or composition with” between the words “arrangement” and “his creditors”, and that the words “any arrangement” are substituted for the words “an arrangement”.

10. = N. S. W. § 4.

Number of persons in firm. 11. A firm may consist of any number of persons not exceeding twenty.

Choice of firm-name. 12. Subject to all statutory and other rules of law for the protection of trade marks, trade names, and rights incident to the good-will of any business, partners may carry on their business under any firm-name they think proper.

Part II. Relations of Partners to Persons Dealing with Them.

13. = N. S. W. § 6, except that the word “general” is omitted before the word “rule”.

14. = N. S. W. § 7, except that the words “which may arise against any other partner who has so conducted himself as to give reasonable ground to the party dealing with the partner first mentioned for believing him to be so authorised” are substituted for the words “incurred by an individual partner”.

15. = V. § 12.

16. = N. S. W. § 9.

17. = V. § 14.

Misapplication of money or property. 18. 1. Where any money or property of a third person is received by one partner, acting within the scope of his real or apparent authority in the partnership affairs, and is misapplied by that partner, and where any money or property of a third person, being as such in the custody of the firm, is misapplied by any partner, the firm shall be liable to make good the loss. 2. For the purposes of this section, money shall be deemed to be in the custody of the firm when it has been paid to any agent of the firm, or paid or credited to the account of the firm with any person in the ordinary course of business. — E. § 11; N. S. W. 11; V. 15; T. 16; S. A. 11; Q. 14; N. Z. 14.

19. = N. S. W. § 12.

Improper employment of trust property. 20. If a partner, being a trustee, improperly employs trust property in the business or on account of the partnership, no other partner shall be liable for the trust property to the persons beneficially interested therein unless he knew of the breach of trust. Nothing in this section shall prevent trust money from being followed and recovered from the firm if still in its possession or under its control. — E. § 13; N. S. W. 13; V. 17; T. 18; S. A. 13; Q. 16; N. Z. 16.

21. = N. S. W. § 14, except that the words are: “executors’ or administrators’ estate or effects”. See note to S. A. Act, § 14.

Admissions and representations by partners. 22. An admission made by any partner concerning the partnership affairs, and in the ordinary course of its business, is evidence against the firm, and a representation made by any partner to any person concerning the partnership affairs, and in the ordinary course of its business, shall have the same effect as against the firm, and so far as concerns the civil rights and liabilities of the partners as if it had been made by all the partners. Provided that this section shall not apply to a representation made by one partner as to the extent of his own authority to bind the firm. — E. § 15; N. S. W. 15; V. 19; T. 20; S. A. 15; Q. 18; N. Z. 18.

23. = N. S. W. § 16.

24. = V. § 21, except that in (1) the words “or omitted” are inserted between the words “done” and “before”; and that in (3) the words “and an incoming partner may become subject thereto” are inserted after the words “existing liabilities”, and the words “and such agreement” are substituted for the words “and this agreement”.

25. = Q. § 21, except that the word "an" is inserted before the word "agreement".

Special powers of partners. 26. Subject to the provisions of this Act, the acts of every partner who does any act necessary for or usually done in carrying on business of the kind carried on by the firm of which he is a member shall bind his partners to the same extent as if he were their agent duly appointed for that purpose, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing (a) knows that he has no authority, or (b) does not know or believe him to be a partner. — E. § 5; N. S. W. 5; V. 9; T. 10; S. A. 5; Q. 8; N. Z. 8. See *Lee v. Goldsmith* 8 W. A. L. R. 135.

Special powers of partners in certain firms. 27. Subject to the provisions of the last foregoing section, every member of a partnership carrying on business of a kind in which any of the following acts is usually done, may bind the firm by the same respectively: a) He may draw, accept, indorse make, and issue bills and negotiable instruments in the name of the firm; b) He may borrow money on the credit of the firm; c) He may, for the purpose of such borrowing, or of securing an existing debt, pledge any goods or personal chattels belonging to the firm; d) He may, for the like purposes, make an equitable mortgage by deposit of deeds or otherwise of real estate or chattels real belonging to the firm.

28. 1—2. = N. S. W. § 23 (1—2), except that the words "no writ" are substituted for the words "a writ", and that the word "not" is omitted. 3. Every order for sale or foreclosure made under this section shall include liberty for the other partner or partners at any time to purchase or redeem the interest charged. 4. For the purposes of this section, the terms "firm" and "partners" shall include every unincorporated company and association formed for purposes of gain, and the members thereof; and "writ of execution" shall include writs of *fieri facias*, *elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto.

Part III. Relations of Partners to One Another.

29. = V. § 23.

30. 1—2. = N. S. W. § 20 (1—2), except that in (2) the words "as necessary" are substituted for the words "as is necessary". 3. Where the co-owners of an estate or interest in any land not being itself partnership property are partners as to profits made by the use of that land or estate, and purchase other land or estate out of the profits to be used in like manner, the land so purchased belongs to them, in the absence of an agreement to the contrary, not as partners, but as co-owners for the same respective estates and interests as are held by them in the land first mentioned at the date of the purchase.

31. = N. S. W. § 21.

Conversion of real into personal estate. 32. Where land has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal and not real estate. — E. § 22; N. S. W. 22; V. 26; T. 27; S. A. 22; Q. 25; N. Z. 25.

What is a partner's share. 33. The share of a partner in the partnership property at any time is the proportion of the then existing partnership assets to which he would be entitled if the whole were realised and converted into money, and after all the then existing debts and liabilities of the firm had been discharged.

34. 1—4. = V. § 28 (1—4), except that in (3) the word "six" is substituted for "seven". 5. Every partner may take part in the management of the partnership business, and shall attend diligently to the partnership business, and shall not be entitled to any remuneration for acting in the partnership business. 6. = N. S. W. § 24 (7). 7. Any difference arising as to matters connected with the ordinary course of the partnership business may be decided by a majority of the partners. Provided that the decision must be arrived at in good faith for the interest of the firm as a whole, and that every partner must have an opportunity of being heard in the matter. This proviso extends to powers conferred by a majority of the partners by express agreement. 8. = N. S. W. § 24 (9). 9. No change may be made in the conduct or regulation of the partnership affairs with-

out the consent or authority of a majority of the partners, and no change may be made in the nature of the partnership business, or the place where it is carried on, without the consent of all existing partners.

Expulsion of partner. 35. 1. No majority of the partners can expel any partner, unless a power to do so has been conferred by written agreement between the partners. 2. Where such power is conferred it may be exercised only in good faith, with a view to the benefit of the firm, and the partner whom it is sought to expel must have an opportunity of being heard. — E. § 25; N. S. W. 25; V. 29; T. 30; S. A. 25; Q. 28; N. Z. 28.

Retirement of partner where fixed term. 36. Where a partnership has been entered into for a fixed term, no partner can retire from it during that term except with the consent of all the partners, or in the exercise of an option previously conferred by written agreement.

37. = N. S. W. § 26, except that in both subsections the words "in writing" are inserted after the word "notice".

38. = N. S. W. § 27.

39. = V. § 32.

40—41. = N. S. W. § 29—30.

42. = N. S. W. § 31, except that the words "or redeemable charge" are omitted, and that the words "require any accounts" are substituted for the words "require any account".

Dissolution of partnership and its consequences.

43. = N. S. W. § 32, except that in (3) the words "in writing" are inserted after the word "notice".

44. 1. = N. S. W. § 33 (1). 2. A partnership may at the option of the other partners, or any of them, by written notice be dissolved if any partner assigns his share of the partnership property, or suffers such share to be charged under this Act for his separate debt. 3. The dissolution shall take effect from the date of the death, bankruptcy, or notice as the case may be. 4. Such notice shall be given within twenty-eight days after the partner or partners giving the same has or have notice of the assignment or charge.

45. = N. S. W. § 34.

Dissolution by the Court. 46. On application by a partner the court may decree a dissolution of the partnership in any of the following cases: a) When a partner is found lunatic by inquisition, or is shown to the satisfaction of the court to be of unsound mind, in either of which cases the application may be made as well on behalf of that partner by his committee or next friend or person having title to intervene, as by any other partner; b) When a partner, other than the partner suing, becomes in any other way permanently incapable of performing his part of the partnership contract; c) When a partner, other than the partner suing, has been guilty of such conduct as in the opinion of the court, renders him unfit to be associated with the partnership, or is calculated to prejudicially affect the carrying on of the business; d) When a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement, or otherwise so conducts himself in matters relating to the partnership business, that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him; e) When a partner, other than the partner suing, encumbers his interest in the property or profits of the firm; f) When the business of the partnership can only be carried on at a loss; g) Whenever in any case whatever circumstances have arisen which, in the opinion of the court, render it just and equitable that the partnership be dissolved. — E. § 35; N. S. W. 35; V. 39; T. 40; S. A. 35; Q. 38; N. Z. 38.

47. 1. = N. S. W. § 36 (1), except that the beginning word is "where" instead of "when". 2. An advertisement in the *Government Gazette* and in a Perth or local newspaper (if any) as to a firm whose principal place of business is in Western Australia, shall be notice as to persons who had not dealings with the firm before the date of the dissolution or change so advertised. 3. = N. S. W. § 36 (3). — E. § 36; N. S. W. 36; V. 40; T. 41; S. A. 36; Q. 39; N. Z. 39. — A retiring partner is liable for subsequently contracted liabilities where old creditors continue to do business with the firm in the belief that he is still a member of the firm, where he has not given proper notice, and it is found as a fact that the creditor was justified in the belief that defendant was still a member of the firm. — *Piesse & Co. v. Cargoe*, 6 W. A. L. R. 223.

48—50. = N. S. W. § 37—39, except that in § 48 the words “necessary or proper” are substituted for the words “necessary and proper”.

Sale of good-will on dissolution. 51. On the dissolution of a partnership every partner shall be entitled, in the absence of any agreement to the contrary, to have the good-will of the business sold for the common benefit of all the partners.

Use of partnership name may be restrained. 52. After a dissolution every partner in the dissolved firm, or his representatives, may, in the absence of any agreement to the contrary, restrain any other partner, or his representative, from carrying on the same business under the firm-name until the affairs of the firm have been wound up and the partnership property disposed of.

53. = V. § 44.

54. = N. S. W. § 41.

55. 1—2. = N. S. W. § 42 (1—2), except that in (1) the words “surviving or continuing partners” are substituted for the words “surviving and continuing partners”. A new subsection is added as follows: 3. In determining how far the profits made since the dissolution are attributable to the outgoing partner’s capital, the court shall have regard to the nature of the business, the amount of capital from time to time employed in it, the skill and industry of each partner taking part in it, and the conduct of the parties generally. And the court may allow to any such continuing partners such remuneration as to the court seems meet for carrying on the partnership business.

56. = N. S. W. § 46.

57. = V. § 48.

Schedule.

Act Repealed.

Section 4 of the Imperial Act, 19 and 20 Victoria, 97 (“The Mercantile Law Amendment Act, 1856”), as adopted by the Ordinance 31 Victoria, No. 8.

b) No. 17 of 1909. An Act to establish Limited Partnerships (6th February, 1909).¹⁾

Short title. 1. This Act may be cited as the *Limited Partnerships Act, 1909*. — E. § 1; T. 1.

Commencement. 2. This Act shall come into force on the first day of May, One thousand nine hundred and nine. — E. § 2; T. 2.

Interpretation. 3. In the construction of this Act the following words and expressions shall have the meanings respectively assigned to them in this section, unless there is something in the subject or context repugnant to such construction: “Firm”, “firm name”, and “business” have the same meanings as in the *Partnership Act, 1895*; “General partner” shall mean any partner who is not a limited partner as defined by this Act. — E. § 3; T. 3.

Definition and constitution of limited partnership. 4. 1. From and after the commencement of this Act limited partnerships may be formed in the manner and subject to the conditions by this Act provided. 2. A limited partnership shall not consist, in the case of a partnership carrying on the business of banking, of more than ten persons, and, in the case of any other partnership, of more than twenty persons, and must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto or undertake to contribute thereto a sum or sums as capital or property valued at a stated amount, which shall be chargeable with and applicable to the payment of the debts and obligations of the firm and who shall not be liable for the debts or obligations of the firm. 3. A limited partner shall not during the continuance of the partnership, either directly or indirectly, draw out or receive back any part of his contribution, and if he does so draw out or receive

¹⁾ The reference in the notes are to (E.) the English *Limited Partnerships Act, 1907* (7 Edw. 7, c. 24), to the Tasmanian *Limited Partnerships Act, 1908*, the *Mercantile Act of Queensland*, and the *Partnership Act of New Zealand*.

back any such part shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back. 4. A body corporate may be a limited partner. — E. § 4; T. 4; Q. 53, 61, 62; N. Z. 49, 59, 60.

Registration of limited partnership required. 5. Every limited partnership must be registered as such in accordance with the provisions of this Act, or in default thereof it shall be deemed to be a general partnership, and every limited partner shall be deemed to be a general partner. — E. § 5; T. 5.

Modifications of general law in the case of limited partnerships. 6. 1. A limited partner shall not take part in the management of the partnership business, and shall not have power to bind the firm: Provided that the limited partner may, by himself or his agent, at any time inspect the books of the firm, and examine into the state and prospects of the partnership business, and may advise with the partners thereon. If a limited partner takes part in the management of the partnership business he shall be liable for all debts and obligations of the firm incurred while he so takes part in the management as though he were a general partner. 2. A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner, and the lunacy of a limited partner shall not be a ground for dissolution of the partnership by the court. 3. In the event of the dissolution of a limited partnership its affairs shall be wound up by the general partners, unless the court otherwise orders. 4. Applications to the court to wind up a limited partnership shall be by petition under the *Companies Act, 1893*, and the provisions of that Act relating to the winding-up of companies by the court and of the rules made thereunder (including provisions as to fees) shall, subject to such modifications (if any) as the Governor, may by rules provide, apply to the winding-up by the court of limited partnerships, with the substitution of general partners for directors. 5. Subject to any agreement expressed or implied between the partners: a) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the general partners; b) A limited partner may, with the consent of the general partners, assign his share in the partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor; c) The other partners shall not be entitled to dissolve the partnership by reason of any limited partner suffering his share to be charged for his separate debt; d) A person may be introduced as a partner without the consent of the existing limited partners; e) A limited partner shall not be entitled to dissolve the partnership by notice. — E. § 6; T. 6; Q. 56, 57; N. Z. 53, 54.

Law as to private partnerships to apply where not excluded by this Act. 7. Subject to the provisions of this Act, the *Partnership Act, 1895*, and the rules of equity and of common law applicable to partnerships, except so far as they are inconsistent with the express provisions of the last-mentioned Act, shall apply to limited partnerships. — E. § 7; T. 7.

Manner and particulars of registration. 8. The registration of a limited partnership shall be effected by sending by post or delivering to the Registrar a statement signed by the partners containing the following particulars: a) The firm name; b) The general nature of the business; c) The principal place of business; d) The full name of each of the partners; e) The term, if any, for which the partnership is entered into, and the date of its commencement; f) A statement that the partnership is limited, and the description of every limited partner as such; g) The sum contributed by each limited partner, and whether paid in cash or how otherwise. — E. § 8; T. 8; Q. 57; N. Z. 54.

Registration of changes in partnerships. 9. 1. If during the continuance of a limited partnership any change is made or occurs in: a) The firm name; b) The general nature of the business; c) The principal place of business; d) The partners or the name of any partner; e) The term or character of the partnership; f) The sum contributed by any limited partner; g) The liability of any partner by reason of his becoming a limited instead of a general partner or a general instead of a limited partner; a statement, signed by the firm, specifying the nature of the change shall within seven days be sent by post or delivered to the Registrar. 2. If default is made in compliance with the requirements of this section each of the general partners shall on summary conviction be liable to a fine not exceeding one pound for each day during which the default continues. — E. § 9; T. 9.

Notice in Gazette of general partner becoming a limited partner and of assignment of share of limited partner. 10. Notice of any arrangement or transaction under

which any person will cease to be a general partner in any firm, and will become a limited partner in that firm, or under which the share of a limited partner in a firm will be assigned to any person, shall be forthwith advertised in the *Government Gazette*, and until notice of the arrangement or transaction is so advertised, the arrangement or transaction shall, for the purposes of this Act, be deemed to be of no effect. — E. § 10; T. 11; Q. 58; N. Z. 60.

Ad valorem stamp duty on contributions by limited partners. 11. The statement of the amount contributed by a limited partner, and a statement of any increase in that amount, sent to the Registrar for registration under this Act, shall be charged with ad valorem stamp duty of five shillings for every one hundred pounds, and any fraction of one hundred pounds over any multiple of one hundred pounds, of the amount so contributed, or of the increase of that amount, as the case may be; and in default of payment of stamp duty thereon as herein required, the duty with interest thereon at the rate of five per cent. per annum from the date of delivery of such statement shall be a joint and several debt to His Majesty, recoverable from the partners, or any of them, in the said statements named, or, in the case of an increase, from all or any of the said partners whose discontinuance in the firm shall not, before the date of delivery of such statement of increase, have been duly notified to the Registrar. — E. § 11.

Making false returns to be misdemeanour. 12. Every one commits a misdemeanour, and shall be liable to imprisonment with hard labour for a term not exceeding two years, who makes, signs, sends, or delivers for the purpose of registration under this Act any false statement known by him to be false. — E. § 12; T. 12; Q. 57; N. Z. 55.

Registrar to file statement and issue certificate of registration. 13. On receiving any statement made in pursuance of this Act, the Registrar shall cause the same to be filed, and he shall send by post to the firm from whom such statement shall have been received a certificate of the registration thereof. — E. § 13; T. 13.

Register and index to be kept. 14. The Registrar shall keep, in proper books, to be provided for the purpose, a register and an index of all the limited partnerships registered as aforesaid, and of all the statements registered in relation to such partnerships. — E. § 14; T. 14.

Registrar of Joint Stock Companies to be Registrar under Act. 15. The Registrar of Companies shall be the Registrar of limited partnerships, and the office for the registration of companies in Perth shall be the office for the registration of limited partnerships. — E. §§ 14, 15; Q. 57; N. Z. 64.

Inspection of statements registered. 16. 1. Any person may inspect the statements filed by the Registrar in the register offices aforesaid, and there shall be paid for such inspection such fees as may be appointed by the Governor, not exceeding one shilling for each inspection; and any person may require a certificate of the registration of any limited partnership, or a copy of or extract from any registered statement, to be certified by the Registrar, and there shall be paid for such certificate of registration, certified copy, or extract such fees as the Governor may appoint, not exceeding two shillings for the certificate of registration, and not exceeding sixpence for each folio of seventy-two words. 2. A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy under the hand of the Registrar (whom it shall not be necessary to prove to be the Registrar) shall, in all legal proceedings, civil or criminal, and in all cases whatsoever be received in evidence. — E. § 16; T. 15.

Power to make rules. 17. The Governor may make rules concerning any of the following matters: a) The fees to be paid to the Registrar under this Act, so that they do not exceed in the case of the original registration of a limited partnership the sum of two pounds, and in any other case the sum of five shillings; b) The duties or additional duties to be performed by the Registrar for the purposes of this Act; c) The forms to be used for the purposes of this Act; d) Generally the conduct and regulation of registration under this Act and any matters incidental thereto. — E. § 17; T. 16.

Registration of Firms Acts.¹⁾

1. New South Wales. No. 100 of 1902. An Act to provide for the Registration of Firms (17th December, 1902).

Short title. 1. This Act may be cited as the *Registration of Firms Act, 1902*. — V. 1; T. 1; Q. 1; W. A. 1.

Commencement of Act. 2. This Act shall come into operation on the first day of January, One thousand nine hundred and three. — V. 2; T. 2; W. A. 2.

Interpretation. 3. In this Act, unless the context otherwise requires: "Business" includes trade and profession. "Firm" means any two or more persons lawfully associated for the purpose of carrying on any business, but shall not include a company registered or incorporated within the British Dominions under, by, or in pursuance of any Act of Parliament, Letters Patent, or Royal Charter. "Firm-name" means the name or style under which any business is carried on, whether in partnership or otherwise. "Prescribed" means prescribed by regulations made in pursuance of this Act. "Usual name" includes a signature habitually used for business purposes. "Registrar-General" includes a Deputy Registrar-General and Deputy Registrar lawfully appointed for the time being. — V. 3; T. 3; Q. 2; W. A. 3.

Firms and persons to be registered. 4. From and after the commencement of this Act a) Every firm carrying on business or having any place of business in New South Wales under a firm-name which does not consist of the full or the usual names of all the partners without any addition; and b) Every person carrying on business or having any place of business in New South Wales under any firm-name consisting of or containing any name or addition other than the full or the usual name of that person shall register in the manner directed by this Act the name under which their or his business is or is intended to be carried on. — V. 4; T. 4; Q. 4, 5; W. A. 4.

Manner and particulars of registration. 5. Registration under this Act shall be effected by sending by post or delivering to the Registrar-General a statement in writing containing the following particulars: a) The firm-name; b) The nature of the business; c) The place or places where the business is carried on, or is intended to be carried on, in New South Wales; d) The full name, usual residence, and other occupation (if any) of the person or persons carrying on or intending to carry on the business; e) If the business is commenced after the commencement of this Act, the date of the commencement of the business. — V. 6; T. 5; Q. 7; W. A. 5.

Particulars to be written by persons registering, and attested. 6. 1. The person or persons carrying on or intending to carry on any business required to be registered as aforesaid shall sign or acknowledge a statement of the particulars required for registration, if in New South Wales, in the presence of the Registrar-General or a justice of the peace, or a commissioner of the Supreme Court for taking affidavits, or a barrister or solicitor practising in New South Wales, and, if elsewhere than in New South Wales, in the presence of a British consul, a notary public, or the Agent-General of the State of New South Wales, or a commissioner for affidavits for New South Wales, by whom respectively such signatures or acknowledgments shall be attested. 2. The foregoing provisions of this section shall be deemed to be complied with if any partner in New South Wales signs or acknowledges the said statement. 3. If there is in New South Wales no partner carrying on or intending to carry on a business carried on under a firm-name, the foregoing provisions of this section shall be deemed to be sufficiently complied with if the said statement is signed or acknowledged by any person who has previously filed in the office of the Registrar-General a statutory declaration or produced a power of attorney showing that he is duly authorised by and on behalf of such person or persons as is or are described in such declaration or power of attorney to carry on the business the firm-name of which he desires to have registered. 4. A fee of two shillings and sixpence shall be paid to the Registrar-General on filing any such statutory declaration or producing such power of attorney. — V. 7; T. 7; Q. 7, 13; W. A. 6.

¹⁾ The references in the notes are to the Australian acts herein reprinted.

Time for registration. 7. 1. Firms and persons required to be registered under this Act, who at the commencement of this Act are carrying on business in New South Wales, shall comply with the provisions of this Act within six months after such commencement. 2. Other firms and persons required to be registered under this Act shall register accordingly before they commence business. — V. 8; T. 8; Q., 6; W. A. 7.

Registration of changes in firm. 8. Where a change occurs in the constitution of a registered firm, the members of the firm as reconstituted shall, within one month after such change, send by post or deliver to the Registrar-General a statement thereof in the form in the Schedule to this Act or in any other prescribed form; and the same provision shall apply where a change occurs in the ownership of any business carried on by one person and required to be registered under this Act. — V. 10; T. 10; Q. 11; W. A. 9.

Re-registration on change of firm-name. 9. Where a change occurs in the firm-name of any firm or person required to be registered under this Act, such firm or person shall re-register, as in the case of a new business, and the statement sent or delivered to the Registrar-General shall mention the former firm-name as being abandoned, as well as the particulars required for a new registration. — V. 11; T. 11; Q. 9; W. A. 10.

Penalty for default in registration. 10. If any person by this Act required to send or deliver any statement shall make default without reasonable excuse in sending or delivering the same within the prescribed time after a written demand in that behalf by the Registrar-General or in the manner and within the time specified by this Act, he shall on conviction be liable to a penalty not exceeding two pounds for the first offence, and for every subsequent conviction to a penalty not exceeding five pounds. — V. 12; T. 12; Q. 17; W. A. 11.

Persons in default bringing action shall be ordered by court to register. 11. 1. Where any firm or person by this Act required to send or deliver any statement to the Registrar-General has therein made default, and during such default commences any suit or action in any court in the firm-name or for a cause of action arising out of any dealing by such firm or person in the firm-name, such court shall order the firm or person in default to send or deliver to the Registrar-General the proper statement as required by this Act, and may stay all proceedings in the suit or action until the order be complied with, or allow proceedings to be continued on an undertaking to comply with such order within a time to be limited by the court. 2. The power by this section given to the court may be exercised by a Supreme Court judge in chambers, or by a District Court judge, or by a police or stipendiary magistrate, or by two or more justices sitting in petty sessions. — V. 13; T. 13; Q. 19; W. A. 12.

Proceedings against non-registered firms. 12. If any firm or person required to be registered as provided in this Act shall fail to register accordingly, all proceedings in any court of competent jurisdiction may be taken and prosecuted against such firm or person in the name under which such firm or person is carrying on business, and such name shall for the purposes of such proceedings be a sufficient designation of such firm or person in all writs, summonses, complaints, and other legal documents and instruments. Provided however that nothing in this section shall be construed to exempt any firm or person from compliance with any of the provisions of this Act. — Q. 17 (4).

Making false returns under this Act to be a misdemeanour. 13. Every person who wilfully makes, signs, acknowledges, or sends or delivers to the Registrar-General any false statement purporting to be made under this Act shall be guilty of a misdemeanour, and shall on conviction be liable to imprisonment for a term not exceeding two years. — V. 14; T. 14; W. A. 13.

Informations for offences. 14. Informations for offences against this Act (other than those referred to in the last preceding section) or for breaches of any regulations made under this Act shall be heard and determined in a summary way by a court of petty sessions. An appeal shall lie from any conviction for any such offence or breach. — T. 22; Q. 22.

Registrar to file statement and issue certificate. 15. The Registrar-General on receiving any statement made in pursuance of this Act, shall cause the same to be filed, and shall send by post or deliver a certificate of the registration thereof to the firm or person registering. — V. 15; T. 15; Q. 14; W. A. 14.

Register and index to be kept. 16. The Registrar-General shall keep in proper books, to be provided for the purpose, a register and an index of all the firm-names of firms and persons registered under this Act, together with the statements registered in reference thereto. — V. 16; T. 16; Q. 15 (2); W. A. 15.

Inspection of statements registered. 17. 1. Any person may inspect, make a copy of, or extracts from the statements filed by the Registrar-General, and there shall be paid for every such inspection a fee of one shilling. 2. Any person may require a certificate of the registration of any firm or person, or a copy of, or extract from any registered statement to be certified by the Registrar-General, and there shall be paid for every such certificate of registration a fee of five shillings, and for every such copy or extract a fee at the rate of sixpence for each folio of seventy-two words, or such other fees as may be prescribed by the Governor. 3. A certificate of registration, or a copy of, or extract from any statement registered under this Act, purporting to be signed and certified by the Registrar-General, shall in all courts of justice within the State of New South Wales be admitted as *prima facie* evidence of the fact and date of registration as shown thereon and of the other particulars therein contained. — V. 17; T. 17, 18; Q. 15 (4), 20; W. A. 16.

Registrar-General to send reply to inquiries. 18. It shall be the duty of the Registrar-General on receiving payment of such fees as may be prescribed to send by post a reply to any inquiry made of him by letter in reference to any registration effected under the provisions of this Act. — V. 18; Q. 16.

Registrar-General to report offences against this Act. 19. It shall be the duty of the Registrar-General to take cognizance of and to report to the Attorney-General or the Solicitor-General every contravention on the part of any firm or person of any of the provisions of this Act or of any regulations made hereunder.

Regulations. 20. The Governor may make regulations to take effect after the commencement of this Act: a) Prescribing the fees to be paid to the Registrar-General under this Act: Provided that for the registration of any one statement the fee shall not exceed the sum of five shillings; b) Prescribing the forms to be used and the mode of payment of fees under this Act; c) Prescribing the duties or additional duties to be performed by the Registrar-General for the purposes of this Act; d) Prescribing generally the conduct and regulation of registration under this Act and as to any matters incidental thereto; and may in those regulations authorise any penalty not exceeding five pounds to be imposed for any breach of the same. All such regulations shall be published in the *Government Gazette*, and shall be laid before both Houses of Parliament within fourteen days after such publication, if Parliament is sitting, but if Parliament is not sitting, then within fourteen days after the next meeting of Parliament. — V. 19, 20; T. 19, 20; Q. 21; W. A. 17, 18.

Forms. 21. For the purpose of making the statements required by this Act, the forms in the Schedule to this Act or any prescribed forms to the same effect may be used, and if used, shall be sufficient. — V. 21; T. 21; W. A. 19.

Schedule.

Forms of Statement.

Registration of Firms Act 1902.

A. Original registration of a firm [or person].

The firm-name is

The business of the firm [or person] is

It is intended to carry on the business at

Name [or names] of person [or persons] carrying on [or intending to carry on] the business

Full name [to be written or acknowledged by each person himself].

Usual residence.

Other occupation, description, and addition [if any].

Date of intended commencement of business or establishment of new place of business, if after the commencement of the Act

Signed and declared at _____ on the _____ day of _____ 19 .

Before me,—
 Registrar-General; or
 Deputy Registrar-General; or
 Deputy Registrar; or
 A Justice of the Peace; or
 A Commissioner for taking Affidavits; or
 Barrister; or
 Solicitor; or
 British Consul at _____ ; or
 Notary public of _____ ; or
 Agent-General of the State of New South Wales [as the case may be].

Registration of Firms Act 1902.

B. Notice of change in constitution of registered firm.

We [or I] the undersigned [the members of the firm as reconstituted, or the new proprietor of the business, as the case may be] hereby give notice that on the _____ day of _____ 19 , the following change took place in the constitution of the firm [or person] registered by the name of _____ and Company, that is to say—

*A. B. retired from the firm.

*C. D. became a member of the firm.

* As the case may be.

†Description of a New Member.

Full name.	Usual residence.	Other occupation, description and additions [if any].

Signed and declared at _____ on the _____ day of _____ 19 .

Before me,—
 Registrar-General; or
 Deputy Registrar-General; or
 Deputy Registrar; or
 A Justice of the Peace; or
 A Commissioner for taking Affidavits; or
 Barrister; or
 Solicitor; or
 British Consul at _____ ; or
 Notary public of _____ ; or
 Agent-General of the State of New South Wales [as the case may be].

† As upon an original registration.

Registration of Firms Act 1902.

C. Notice of change of registered firm-name. [In addition to Form A.]

The persons [or person] now registering are [or is] the persons [or person] who heretofore carried on business under the registered firm-name of _____ and Company, which is abandoned as from the date of this notice.

2. Victoria. 56 Vic. No. 1256. An Act to provide for the Registration of Firms (1st September, 1892).

1. = N. S. W. § 1, except: "1892" is substituted for "1902".

2. = N. S. W. § 2, except: "eight hundred and ninety-three" is substituted for "nine hundred and three".

3. = N. S. W. § 3, except: "within the British dominions" is omitted; the entire sentence beginning with "Registrar-General" and ending with "time being" is omitted.

4. = N. S. W. § 4, except: "Victoria" is substituted for "New South Wales".

Registration unnecessary in case of temporary contractors. 5. Notwithstanding anything contained in this Act, it shall not be necessary that registration under this Act be effected in the case of persons who do not publicly notify or advertise themselves as carrying on any specified business at any specified place of business in Victoria, and who merely contract to perform specified work for or supply specified materials to any particular person within any period not exceeding twelve months from the time of so contracting. — T. 6; Q. 5.

6. = N. S. W. § 5, except: in (c) "of the business" is substituted for "where the business is carried on, or is intended to be carried on, in New South Wales;" in (e) the Act reads: "If the business is commenced, or any new place of business is established after the commencement of this Act, the date of the commencement of the business or establishment of the place of business."

Particulars to be written by persons registering, and to be attested. 7. 1. The persons carrying on, or intending to carry on any business under a firm-name required to be registered as aforesaid shall sign or acknowledge a statement of the particulars required for registration, if in Victoria, in the presence of a justice of the peace, or a commissioner for taking declarations and affidavits, or a commissioner for taking affidavits, or a barrister and solicitor, and, if elsewhere than in Victoria, in the presence of a British consul or notary public, by whom respectively such signatures or acknowledgments shall be attested. 2. = N. S. W. § 6 (2), except: "Victoria" is substituted for "New South Wales". 3. = N. S. W. § 6 (3), except: "Victoria" is substituted for "New South Wales"; after "statutory declaration" is inserted the following, in lieu of the words of the N. S. W. Act: "that he is duly authorised by and on behalf of such persons as are described in such declaration to carry on the business the firm-name of which he desires to have registered." 4. A fee of five shillings shall be paid to the Registrar-General on filing any such statutory declaration. — N. S. W. 6; T. 7; Q. 7, 13; W. A. 6.

Time for registration. 8. 1. The firms and persons required to be registered as provided in this Act shall register accordingly before they commence business. 2. Firms or persons who have carried on business in Victoria before the commencement of this Act shall be deemed to have sufficiently complied with this Act if they register within three months after such commencement. — N. S. W. 7; T. 8; Q. 6; W. A. 7.

Registered name always to be used. 9. The firm-name of any firm or person registered under this Act shall be used in all matters connected with or relating to the business carried on by such firm or person. — T. 9; Q. 18; W. A. 9.

10. = N. S. W. § 8, except: the sentence beginning with "and the same provision" is omitted.

Re-registration on change of firm-name. 11. A registered firm changing its firm-name shall be registered as if it were a new firm, and the statement sent or delivered to the Registrar-General shall mention the former name of the firm as being abandoned by it as well as the particulars required for a new registration. — N. S. W. 9; T. 11; Q. 9; W. A. 10.

12. = N. S. W. § 10, except: "within the prescribed time after a written demand in that behalf by the Registrar-General or" is omitted; "five pounds" is substituted for "two pounds", and "ten pounds" for "five pounds".

Persons in default bringing action shall be ordered by court to register.

13. 1. Where any firm or person by this Act required to send or deliver any statement to the Registrar-General has therein made default, and during the default commences an action in any court in the firm-name or for a cause of action arising out of any dealing by such firm or person in the firm-name, such court shall order the firm or person in default to send or deliver to the Registrar-General the proper statement, and may stay all proceedings in the action until the order be complied with, or allow proceedings to be continued on an undertaking to comply with the order within a time to be limited by the court. 2. The power by this section given to the court may be exercised by a judge in chambers. — N. S. W. 11; T. 13; Q. 19; W. A. 12. — This Act does not enable an individual to bring an action in the name of his firm if he could not do so before the passing of the Act. — *Baxter & Co. v. Hill*

& Christie, 22 V. L. R. 22; 17 A. L. T. 332; 2 A. L. R. 160. § 13 applies to proceedings in courts of petty sessions. — Gleeson Bros. v. Ellison & Evered, 27 V. L. R. 319; 23 A. L. T. 172; 8 A. L. R. 28. See also Nation v. Little, 21 V. L. R. 220; 17 A. L. T. 123; 1 A. L. R. 190.

14. = N. S. W. § 13.

Registrar to file statement and issue certificate of registration. 15. On receiving any statement made in pursuance of this Act the Registrar-General shall cause the same to be filed, and he shall send by post or deliver a certificate of the registration thereof to the firm or person registering. — N. S. W. 15; T. 15; Q. 14; W. A. 14.

Register and index to be kept. 16. The Registrar-General shall keep in proper books, to be provided for the purpose, a register and an index of all the firms and the firm-name of persons registered, and of all the statements registered in reference thereto. — N. S. W. 16; T. 16; Q. 15 (2); W. A. 15.

17. 1. = N. S. W. § 17 (1). 2. Any person may require a certificate of the registration of any firm or person, or a copy of, or extract from any registered statement to be certified by the Registrar-General, and there shall be paid for every such certificate of registration a fee of five shillings, and for each folio of seventy-two words a fee of sixpence or such other fees as may be prescribed by the Governor in Council. 3. A certificate of registration, or a copy of, or extract from any statement registered under this Act, purporting to be signed and certified by the Registrar-General, shall in all courts and before all arbitrators be admitted as *prima facie* evidence thereof, and of the fact and date of registration as shown thereon. — N. S. W. 17; T. 17, 18; Q. 15 (4), 20; W. A. 16.

Registrar-General to send reply to inquiries. 18. On receiving stamps or otherwise in payment of such fees as may be prescribed, the Registrar-General shall send by post a reply to any inquiry made of him by letter in reference to any registration under the provisions of this Act. — N. S. W. 18; Q. 16.

Power for Governor in Council to make regulations. 19. The Governor in Council may make regulations as to all or any of the following matters: a) Prescribing the fees to be paid to the Registrar-General under this Act: Provided that for the registration of any one statement the fee shall not exceed the sum of five shillings; b) Prescribing the forms to be used, and the mode of payment of fees under this Act; c) Prescribing the duties, or additional duties, to be performed by the Registrar-General for the purposes of this Act; and d) Prescribing generally the conduct and regulation of registration under this Act, and as to any matters incidental thereto. — N. S. W. 20; T. 19; Q. 21; W. A. 17.

Regulations to be laid before Parliament. 20. 1. All regulations when made by the Governor in Council and published in the *Government Gazette* shall be valid in law as if the same were enacted in this Act. 2. All regulations shall within one month after the making thereof be laid before both Houses of Parliament, if Parliament be then in session, or if not then within fourteen days after the commencement of the next session of Parliament. — N. S. W. 20; T. 20; Q. 21; W. A. 18.

21. = N. S. W. § 21, except: "like effect" is substituted for "same effect".

Schedule.

(The forms of statement are substantially similar to those in the N. S. W. Act, q. v.)

3. Tasmania. 63 Vic. No. 34. An Act to provide for the Registration of Firms (22d December, 1899).

1. = N. S. W. § 1, except: "1899" is substituted for "1902".

Commencement of Act. 2. This Act shall come into operation on the first day of July, One thousand nine hundred, which date is hereinafter referred to as the commencement of this Act. — N. S. W. 2; V. 2; W. A. 2.

Interpretation. 3. In this Act, unless some other meaning is clearly intended: "Business" includes trade and profession. "Firm" shall mean any two or more persons lawfully associated for the purpose of carrying on any business, but shall not include a company incorporated by or in pursuance of any Act of Parliament, Letters Patent, or Royal Charter. "Firm-name" shall mean the name or style under which any business is carried on, whether in partnership or other-

wise. "Prescribed" shall mean prescribed by regulations made in pursuance of this Act. "Registrar" shall mean the Registrar of the Supreme Court. "Usual name" shall include a signature habitually used for business purposes. — N. S. W. 3; V. 3; Q. 2; W. A. 3.

4. = N. S. W. § 4, except: in (a) "Tasmania" is substituted for "New South Wales", and "or all the acting partners" is added after "partners"; in (b) "Tasmania" is substituted for "New South Wales"; and a third subdivision is added: c) Every person carrying on business, or having any place of business in Tasmania under any surname only, and for the purposes of this Act, such surname so used shall be deemed a firm-name.

Manner and particulars of registration. 5. Registration under this Act shall be effected by sending by post or delivering to the Registrar a statement in writing containing the following particulars: a) The firm-name. b) The nature of business. c) The place or places of the business. d) The full name, usual residence, and other occupation (if any) of the person or persons carrying on or intending to carry on the business. e) If the business is commenced or any new place of business is established after the commencement of this Act, the date of the commencement of the business or establishment of the place of business. — N. S. W. 5; V. 6; Q. 7; W. A. 5.

Exemptions. 6. Persons who do not publicly notify or advertise themselves as carrying on any specified business at any specified place of business in Tasmania, and who merely contract to perform specified work for or supply specified materials to any particular person within any period not exceeding twelve months from the time of so contracting, shall be exempt from registration under this Act. — V. 5; Q. 5.

Particulars for registration. 7. 1. The persons carrying on or intending to carry on any business under a firm-name required to be registered as aforesaid shall sign or shall acknowledge a statement of the particulars required for registration, if in Tasmania, in the presence of a justice of the peace, or commissioner for taking affidavits, or a solicitor, bank manager, postmaster, or postmistress, and, if elsewhere than in Tasmania, in the presence of a British consul or notary public, by whom respectively such signatures or acknowledgments shall be attested. 2. = N. S. W. § 6 (2), except: "Tasmania" is substituted for "New South Wales". 3. = V. § 7 (3), except: "Tasmania" is substituted for "Victoria", and "Registrar" for "Registrar-General". — N. S. W. 6; V. 7. 13; Q. 7; W. A. 6.

Time for registration. 8. The firms and persons required to be registered as aforesaid shall register before they commence business: Provided that if such firms or persons have carried on business in Tasmania before the commencement of this Act, it shall be sufficient if they register within three months after that date: Provided that no firm or person shall be registered under this Act by a firm-name identical to the firm-name of any other firm or person registered under this Act, if such registration is likely to cause such persons or firms to be mistaken the one for the other, and the Registrar shall decide any question arising under this section. — N. S. W. 7; V. 8; Q. 6; W. A. 7.

9. = V. § 9.

Registration of changes in firm. 10. Where a change occurs in the constitution of a registered firm, the members of the firm as re-constituted shall, within one month after such change, send by post or deliver a statement thereof to the Registrar. — N. S. W. 8; V. 10; Q. 11; W. A. 9.

11. = V. § 11, except: "Registrar" is substituted for "Registrar-General".

Penalty for default in registration. 12. If any person by this Act required to send or deliver any statement shall make default without reasonable excuse in sending or delivering the same in manner and within the time specified by this Act, he shall, for every day during which the default continues, be liable on conviction to a penalty of not exceeding one pound. — N. S. W. 10; V. 12; Q. 17; W. A. 11.

Persons in default bringing action. 13. Where any firm or person by this Act required to send or deliver any statement to the Registrar has therein made default, and during the default commences any action in the firm-name, or for a cause of action arising out of any dealing by such firm or person in the firm-name, the Court shall order the firm or person in default to send or deliver to the Registrar the proper statement, and may stay all proceedings in the action until the order be complied with, or allow proceedings to be continued on an

undertaking to comply with the order within a time to be limited by the court. The power by this section given to the court may be exercised in any Supreme Court action by a judge, or in any action under *The Local Courts Act, 1896*, by a judge, or by a commissioner appointed under that Act, or by the chairman of any court of general sessions of the peace appointed a court for the purposes of that Act; and the costs of and incidental to any such order shall be paid by the firm or person in default as aforesaid. — N. S. W. 11; V. 13; Q. 19; W. A. 12.

False returns. 14. Every one commits a misdemeanour, and shall be liable to imprisonment with hard labour for a term not exceeding two years, who makes, signs, acknowledges, sends, or delivers, for the purpose of registration under this Act, any false statement purporting to be made under this Act and known by him to be false. — N. S. W. 13; V. 14; W. A. 13.

15. = V. § 15, except: "Registrar" is substituted for "Registrar-General".

16. = V. § 16, except: "Registrar" is substituted for "Registrar-General".

Inspection and copies. 17. 1. Any person may inspect, make extracts from, or copies of the statements filed by the Registrar. 2. Any person may require a certificate of the registration of any firm or person, or a copy of, or extract from any registered statement, to be certified by the Registrar. — N. S. W. 17 (1—2); V. 17 (1—2); Q. 15 (4); W. A. 16.

18. = V. § 17 (3), except: "Registrar" is substituted for "Registrar-General".

Regulations. 19. The Governor in Council may make regulations for all or any of the following matters, namely: a) Prescribing the fees to be paid to the Registrar under this Act, and the mode of payment thereof: Provided that for the registration of any one statement the fee shall not exceed the sum of five shillings; b) Prescribing the forms to be used; c) Prescribing the conduct and regulation of registration under this Act, and as to any matters incidental thereto. — N. S. W. 20; V. 19; Q. 21; W. A. 17.

Publication in Gazette. 20. 1. All regulations when made shall be published in the *Hobart Gazette*, and shall be valid in law as if the same were enacted in this Act. 2. All regulations shall be laid before Parliament within one month after the making thereof, if Parliament be then in session, or, if not, then within fourteen days after the commencement of the next session of Parliament. — N. S. W. 20; V. 20; Q. 21; W. A. 18.

Forms. 21. For the purpose of making the statements required by this Act, the forms in the Schedule hereto, or any prescribed forms to the like effect, may be used. — N. S. W. 21; V. 21; W. A. 19.

Recovery of penalties. 22. All penalties imposed by this Act may be recovered in a summary manner before any two justices of the peace, in the mode prescribed by *The Magistrates Summary Procedure Act*. Any person who deems himself aggrieved by any penalty imposed under the authority of this Act may appeal against the same in the manner provided by *The Appeals Regulation Act*. — N. S. W. 14; Q. 22.

Schedule.

(The forms of statement are substantially similar to those in the N. S. W. Act, q. v.)

4. Queensland. 2 Edw. 7, No. 12. An Act to provide for the Registration of Firms (26th December, 1902).

1. = N. S. W. § 1, except: "of" is inserted before "1902".

Interpretation. 2. In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say: "Business," any business, trade, or profession. "District," the district assigned to a registrar under or in pursuance of this Act. "Firm," any person individually or any two or more persons in association or partnership carrying on any business or having any place of business in Queensland under any firm-name; the term does not include a company registered under the provisions of *The Companies Acts, 1863 to 1896*, or *The Foreign Companies Act of 1867*, or *The British Companies Act of 1886*, or incorporated by any Act of the Parliament of Queensland, or a foreign company registered under the provisions of *The Foreign Com-*

Firm carrying on under more than one firm-name. 8. If a firm carries on or proposes to carry on business under more than one firm-name, such firm shall for all the purposes of this Act be deemed to be a separate and distinct firm in respect of each and every different firm-name under which it carries on or proposes to carry on business, and shall be so registered accordingly.

Re-registrations on change of firm-name. 9. A registered firm upon changing its firm-name shall be registered as a new firm, and the notice sent or delivered to the registrar shall be in the form last hereinbefore prescribed or to the like effect, with the following addition to be inserted before the attestation:

And take further notice that the persons now registering are the persons who heretofore carried on business under the registered firm-name of _____ which is abandoned as from the date of this notice.

Every such notice shall be accompanied by the fee prescribed in respect of the registration of a firm. — N. S. W. 9; V. 11; T. 11; W. A. 10.

Fee for registration. 10. There shall be paid in respect of the registration of every firm a fee of two pounds. Such fee shall be transmitted with the notice for registration, or re-registration in the case of a change in the registered firm-name, as the case may be.

Registration of changes in firm. 11. When a change occurs in the constitution of a registered firm, the member or members of the firm as reconstituted shall, within fourteen days after such change, send by post or deliver a notice in writing thereof to the registrar in the following form, or to the like effect:

The Registration of Firms Act of 1902.

To the Registrar of Firms for the District of _____

I [or We], the undersigned [*the member or members of the firm as reconstituted*], hereby give notice that on the _____ day of _____, 19____, the following change took place in the constitution of the firm registered under the firm-name of _____ that is to say

A. B. retired from the firm.

C. D. became a member of the firm (*or as the case may be*).

Description of a new member [*or new members*] (*as upon an original registration*).

Full name [to be written or acknowledged by each person himself].	Usual residence.	Other occupation, description, and addition (if any) of each person.

Signed [*or acknowledged*] at _____ on the _____ day of _____, 19____, before me
J. P. [*or as the case may be*].

Every such notice shall be accompanied by a fee of five shillings. — N. S. W. 8; V. 10; T. 10; W. A. 9.

Changes in places of business. 12. When and as often as a registered firm establishes a new place of business, or removes its place of business from one premises to another premises, or ceases to carry on business at any place, the firm shall within fourteen days thereafter send by post or deliver a notice in writing of the fact to the registrar in the following form or to the like effect:

The Registration of Firms Act of 1902.

To the Registrar of Firms for the District of _____

Take notice that on the _____ day of _____ the following change was made in the place [*or places*] of business of the firm registered under the firm-name of _____, that is to say: —

A new place of business was opened at _____ [*or the place of business at*
_____ was removed from _____ street to _____ street, *or the place of*
business at _____ was closed, *or as the case may be*].

(Signed) _____

A. B.

C. D. [*etc., members of the firm*].

Signed [*or acknowledged*] at _____ on the _____ day of _____, 19____, before me.
J. P. [*or as the case may be*].

Every such notice shall be accompanied by a fee of five shillings.

Signatures, etc., of notices. 13. Save as is hereinafter provided, every notice given for any of the purposes of this Act shall be signed or acknowledged by the person individually constituting the firm, or by all the members of the firm, as the case may be. Every such signature or acknowledgment shall be attested, if in Queensland, by and before a justice of the peace, or, if elsewhere, by and before a British consul or notary public: Provided that a) The provisions of this Act shall be deemed to be complied with if any member in Queensland of a firm consisting of more than one person signs or acknowledges the notice; b) If the person individually constituting a firm is not in Queensland, or if there is not in Queensland any member of a firm which consists of more than one person, the provisions of this Act shall be deemed to be sufficiently complied with if the notice is signed or acknowledged by any person who has previously filed in the office of the registrar a statutory declaration that he is duly authorised by and on behalf of the firm to carry on the business of the firm in Queensland. A fee of five shillings shall be paid to the registrar on filing any such declaration. — N. S. W. 6; V. 7; T. 7; W. A. 6.

Certificate of registration. 14. Upon the receipt of a notice given in pursuance of this Act and the prescribed fee, the registrar shall register such notice, and shall without further fee send by post or deliver a certificate of the registration thereof to the firm registering. — N. S. W. 15; V. 15; T. 15; W. A. 14.

Monthly returns by registrar. Register and index. 15. 1. Every registrar shall once in every month, on such date as the principal registrar may appoint, furnish to the principal registrar copies, certified under his hand to be correct, of all notices received by him in pursuance of this Act during the last preceding month, and the principal registrar shall preserve and register all such copies of notices so received by him. 2. The principal registrar shall keep in proper books to be provided for the purpose a register and an index for the whole of Queensland of all registered firms and of all the notices registered in reference thereto. 3. Every registrar shall keep, in proper books to be provided for the purpose, a register and an index for his district of all registered firms and of all the notices registered in reference thereto. 4. Any person, upon payment of a fee of one shilling, shall be entitled to inspect and make an extract from or copy of any notice registered by any registrar. Any person, upon payment of a fee of two shillings and sixpence, shall be entitled to receive a certificate of the registration of any firm, or a copy of or extract from any registered notice signed by the registrar issuing the same and certified by him to be correct. — N. S. W. 16, 17; V. 16, 17; T. 16, 17; W. A. 15, 16.

Registrar to send reply to inquiries. 16. Upon receipt of the prescribed fee, the registrar shall send by post a reply to any inquiry made of him by letter with reference to any registered firm or notice registered under this Act. — N. S. W. 18; V. 18.

Offences and legal process. 17. 1. If any firm or person by this Act required to send or deliver any notice makes default, without reasonable excuse, in sending or delivering the same in the manner and within the time prescribed, such firm or person shall, for every day during which the default continues, be liable for the first offence to a penalty not exceeding five pounds, and for every subsequent offence to a penalty not exceeding ten pounds. 2. All goods, chattels, wares, merchandise, and effects found upon the premises where such firm or person carries on business shall be liable to be distrained and sold to satisfy any penalty for any breach of this Act or any regulation made thereunder. 3. If in any case the person or persons constituting a firm is or are not known or cannot be ascertained, or is or are found to be absent from Queensland, then such firm may be proceeded against for any penalty incurred under this Act or any regulation made thereunder under its firm-name without further description or designation. 4. Service of any complaint or other process upon any person apparently in charge of any premises where any firm carries on business shall be deemed to be sufficient service thereof on such firm. — N. S. W. 10, 12; V. 12; T. 12; W. A. 11.

Registered name always to be used. 18. The firm-name of every registered firm shall be used in all matters connected with or relating to the business of the firm. — V. 9; T. 9; W. A. 9.

Actions by firms in default. 19. When a firm by this Act required to send or deliver any notice to the registrar has therein made default, and during the

default commences an action in any court in the firm-name, or for a cause of action arising out of any dealing by such firm in the firm-name, the court shall order the firm in default to send or deliver to the proper registrar the proper notice, and may stay all proceedings in the action until the order is complied with, or allow proceedings to be continued on an undertaking to comply with the order within a time to be limited by the court. The power by this section given to the court may be exercised by a judge in chambers. The costs of and incidental to any such order shall be paid by the firm in default. — N. S. W. 11; V. 13; T. 13; W. A. 12.

Evidence. 20. In any proceedings for the recovery of any penalty imposed by this Act or any regulation made thereunder, the averment in the complaint that the defendant is a firm within the meaning of this Act shall be sufficient evidence of the fact until the contrary is proved. A certificate of registration of a firm, or a copy of or extract from any notice registered under this Act, purporting to be signed and certified by any registrar, shall in any court or in any proceeding be *prima facie* evidence of all the statements and matters contained therein, and of the fact and date of registration as shown thereon. — N. S. W. 17 (3); V. 17 (3); T. 18; W. A. 16 (3).

Regulations. 21. The Governor in Council may from time to time make regulations for the more effectual execution of this Act. Such regulations may impose a penalty not exceeding ten pounds for any breach of the provisions thereof. All such regulations shall be published in the *Gazette*, and shall thereupon have the same effect as if the same were enacted in this Act. All such regulations shall be laid before both Houses of Parliament within one month after the making thereof, if Parliament is then in session, or, if not, then within fourteen days after the commencement of the next session of Parliament. — N. S. W. 20; V. 19, 20; T. 19, 20; W. A. 17, 18.

Recovery of penalties. 22. All penalties imposed by this Act or any regulation made thereunder may be recovered upon the complaint of a registrar in a summary way before any two justices of the peace, and when recovered shall be paid into the Consolidated Revenue. — N. S. W. 14; T. 22.

5. Western Australia. 61 Vic. No. 14. An Act to provide for the Registration of Firms (23d December, 1897).

1. = N. S. W. § 1, except: "1897" is substituted for "1902".

2. = N. S. W. § 2, except: "March, one thousand eight hundred and ninety-eight" is substituted for "January, one thousand nine hundred and three".

3. = N. S. W. § 3, except: the sentence beginning with "Registrar-General" is omitted.

4. = N. S. W. § 4, except: throughout "Western Australia" is substituted for "New South Wales", and in (a) "the" is inserted before "usual names".

Manner and particulars of registration. 5. Registration under this Act shall be effected by filing with the Registrar of Companies a statement in writing containing the following particulars: a) The firm-name; b) The nature of the business; c) The place or places of the business; d) The full name, usual residence, and other occupation (if any) of the person or persons carrying on or intending to carry on the business. — N. S. W. 5; V. 6; T. 5; Q. 7.

Particulars to be written by persons registering, and to be attested. 6. 1. Such statement shall be signed or acknowledged, if in Western Australia, in the presence of a justice of the peace, or a commissioner of the Supreme Court for taking affidavits, or a solicitor, police officer, postmaster, or postmistress, and, if elsewhere than in Western Australia, in the presence of a British consul, or notary public, or the Agent-General of the Colony or his Secretary, by whom, respectively, such signatures or acknowledgments shall be attested. 2. The foregoing provisions of this section shall be deemed to be complied with if any partner in Western Australia signs or acknowledges the said statement. 3. The foregoing provisions of this section shall be deemed to be sufficiently complied with if the said statement be signed or acknowledged by any person who has previously filed, in the office of the Registrar of Companies, a statutory declaration that he is duly authorised by and on behalf of such persons as are described in such declaration to carry on the business the firm-name of which he desires to have regis-

tered. 4. A fee of five shillings shall be paid to the Registrar of Companies on filing any such statutory declaration. — N. S. W. 6; V. 7; T. 7; Q. 7.

Time for registration. 7. 1. Firms and persons who at the commencement of this Act are carrying on business in Western Australia shall comply with the provisions of this Act within three months after such commencement. 2. Other firms and persons required to be registered, as provided by this Act, shall register accordingly before they commence business. — N. S. W. 7; V. 8; T. 8; Q. 6.

8. = V. § 9.

Registration on change of firm-name. 9. When a change occurs in the constitution of a registered firm, the members of the firm as reconstituted shall, within one month after such change, file with the Registrar of Companies a statement thereof in the form in the Schedule to this Act, or in any other prescribed form. — N. S. W. 8; V. 10; T. 10; Q. 11.

10. = V. § 11, except: "Registrar of Companies" is substituted for "Registrar-General". — N. S. W. 9; V. 11; T. 11; Q. 9. — Where a firm registers more than once in different styles the registrations subsequent to the first are not void. — *Cavanagh v. Hayat*, 7 W. A. L. R. 300.

Penalty for default in registration. 11. Any person who shall fail to comply with any of the provisions of this Act shall on conviction be liable to a penalty not exceeding five pounds for the first offence, and for every subsequent conviction to a penalty not exceeding one hundred pounds. — N. S. W. 10; V. 12; T. 12; Q. 17. — These penalties may be recovered before a Court of Summary Jurisdiction. — 63 Vic. No. 26, § 2. Contracts entered into by a firm not registered in accordance with this Act are not void. — *Cavanagh v. Hayat*, 7 W. A. L. R. 300.

Persons in default bringing action shall be ordered by court to register. 12. 1. When any firm or person shall fail to comply with the provisions of this Act, and during the default brings, institutes, or commences an action, suit, or proceeding in any court in the firm-name, or otherwise, for a cause of action arising out of any dealing by or with such firm or person in the firm-name, such court may stay all proceedings in the action until such provisions be duly complied with by such firm or person. 2. The power by this section given to the court may be exercised by a judge in chambers. — N. S. W. 11; V. 13; T. 13; Q. 19.

13. = N. S. W. § 13, except: "or files with the Registrar of Companies" is substituted for "the Registrar-General".

14. = V. § 15, except: "Registrar of Companies" is substituted for "Registrar-General".

15. = V. § 16, except: "Registrar of Companies" is substituted for "Registrar-General".

16. 1. = N. S. W. § 17 (1), except: "Registrar of Companies" is substituted for "Registrar-General". 2. Any person may require from the Registrar of Companies a certified copy of the certificate of registration of any firm or person, or of the whole or any portion of any registered statement to be certified by the Registrar of Companies, and there shall be paid for every such certificate of registration a fee of five shillings, and for each folio of seventy-two words a fee of sixpence, or such other fees as may be prescribed by the Governor. 3. = V. § 17 (3), except: "Registrar of Companies" is substituted for "Registrar-General".

17. = V. § 19, except: "in Council" is omitted; throughout "Registrar of Companies" is substituted for "Registrar-General"; subsections (c) and (d) are combined in a single subsection (c).

Regulations to be laid before Parliament. 18. All regulations when made by the Governor shall be published in the *Government Gazette*, and shall, within one month after the making thereof, be laid before both Houses of Parliament, if Parliament be then in session, or if not then within fourteen days after the commencement of the next session of Parliament; and all such regulations, not inconsistent with this Act, when so published shall have the force of law, and shall continue in force, unless repealed or altered as aforesaid, or disallowed by both Houses of Parliament. — N. S. W. 20; V. 20; T. 20; Q. 21.

19. = N. S. W. § 21, except: "like effect" is substituted for "same effect".

Schedule.

(The forms of statement are substantially similar to those in the N. S. W. Act, q. v., except that the attestation may be before any of the persons named in the W. A. Act, § 6.)

Companies Acts.¹⁾

1. New South Wales. a) No. 40 of 1899. An Act for consolidating enactments relating to Companies (22d December, 1899).

Short title and division of Act. 1. This Act may be cited for all purposes as the *Companies Act, 1899*, and is divided into Parts and Divisions, as follows. (Here follows an analysis of the Act.)

Interpretation. 2. In this Act and in the Schedules thereto the following terms shall, if not inconsistent with the subject-matter or context, have the respective meanings hereby assigned to them (that is to say): "Company limited by guarantee": A company formed or registered under this Act on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound-up. "Company limited by shares": A company formed or registered under this Act on the principle of having the liability of its members limited to the amount unpaid on their shares. "Court": The Supreme Court in its equitable jurisdiction. "Insurance company" shall include a company that carries on the business of insurance in common with any other business. "Judge": A Judge of the Supreme Court. "Justice": A justice of the peace. "Limited company": A company formed or registered under this Act, wherein the liability of the members is limited either by shares or by guarantee. "Master": The Master in Equity. "No-liability company": A company formed or deemed to be formed under Part II. of this Act. "Registrar": The Registrar of Joint Stock Companies or any person acting as such. "Special resolution": A resolution passed in accordance with the provisions of section two hundred and forty-seven of this Act. "Unlimited company": A company formed or registered under this Act on the principle of having no limit placed on the liability of its members. "Unregistered company": Any partnership, association, or company, except railway or tramway companies incorporated by Act of Parliament, consisting of more than seven members, and not registered under Part I. of this Act. — E. § 285. — For meaning of terms in the other Acts see texts.

Repeal. First Schedule. 3. 1. The Acts mentioned in the First Schedule to this Act are, to the extent therein expressed, hereby repealed. 2. All persons appointed under or by virtue of the provisions of any Act hereby repealed and holding office at the commencement of this Act shall remain in office as if this Act had been in force at the time they were appointed and they had been appointed hereunder, and this Act shall apply to them accordingly. 3. All rules of Court made under the authority of any Act hereby repealed and being in force at the commencement of this Act shall be deemed to have been made under the authority of this Act, and references in any such rules to the provisions of any Act hereby repealed shall be construed as references to the corresponding provisions in this Act. 4. All rules, regulations, and articles of association, and every memorandum for registration, and every memorandum of association duly made or deemed to have been duly made, and all registrations duly effected or deemed to have been duly effected, and any other matter or thing duly done under or in accordance with any of the provisions of any Act hereby repealed and in force and operative at the commencement of this Act, shall be deemed to be and to have been duly made, effected, or done under the corresponding provisions of this Act, and as if this Act had been in force when the same were made, effected, or done respectively. 5. Nothing in this Act shall be taken to affect or control the provisions of the *Married Women's Property Act of 1893*. — E. § 287; T. u. (33 Vic. No. 22) 236—239; S. A. a. (No. 557) 4; W. A. a. (56 Vic. No. 8) 4; N. Z. 327.

Prohibition of partnerships exceeding certain number. Exceptions. Spiritual persons. 4. 1. After the commencement of this Act: a) No company, association, or partnership consisting of more than ten persons shall be formed for carrying on the business of banking; and b) No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless

¹⁾ The references in the notes are to the *English Companies (Consolidation) Act, 1908*, (8 Edw. 7, c. 69), and to the acts of the Australian States and of New Zealand herein reprinted.

it is: 1. Registered as a company under Part I. of this Act; or, 2. Formed in pursuance of some other Act of Parliament, or of a Royal Charter or Letters Patent; or, 3. Incorporated as a no-liability company; or 4. A company formed for mining purposes under or in pursuance of the Act twenty-fourth Victoria number twenty-one, or any Act amending or consolidating the same. 2. No association, co-partnership, or company, and no contract entered into between the members of or by any association, co-partnership, or company, shall be deemed to be invalid by reason only that any member thereof is a spiritual person. — E. § 1; V. a. (No. 1074) 4; T. a. (33 Vic. No. 22) 4; S. A. a. (No. 557) 7; Q. a. (3 Vic. No. 21) 1, e. (27 Vic. No. 4) 3; W. A. a. (56 Vic. No. 8) 7; N. Z. 5.

Part I. Companies and Associations.

Division 1. Constitution and incorporation. Memorandum of association.

Mode of forming company. 5. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Part of this Act in respect of registration, form an incorporated company with or without limited liability. — E. § 2; V. a. (No. 1074) 5; T. a. (33 Vic. No. 22) 6; S. A. a. (No. 557) 9; Q. e. (27 Vic. No. 4) 5; W. A. a. (56 Vic. No. 8) 9; N. Z. 13. — **ULTRA VIRES.** — A building society having power to lend money on security may deposit its money at interest with similar societies. — Australian, etc., Society, 18 L. R. (N. S. W.) (Eq.) 61; 7 B. C. (N. S. W.) 61. A newspaper company has implied power to borrow money for the purpose of defending a libel action. — *Hoe v. Lee*, 3 S. R. (N. S. W.) 30; 20 W. N. (N. S. W.) 23. A company having power to carry out its objects singly or in connection with other companies may purchase shares in companies with objects similar to its own. — Australian, etc., Society v. Wells, 18 L. R. (N. S. W.) 61; 7 B. C. (N. S. W.) 61. See also *Donaldson v. Anglo-Australian, etc., Co.*, 13 L. R. (N. S. W.) (Eq.) 124, 202; 3 B. C. (N. S. W.) 29, 51. In *re Wickham, etc., Co.*, 5 S. R. (N. S. W.) 365; 22 W. N. (N. S. W.) 109. A company can not transfer to others the control of its undertaking, unless expressly authorised. — *Brown v. Wickham, etc., Co.*, 15 L. R. (N. S. W.) (L.) 306; 11 W. N. (N. S. W.) 30. For a consideration of implied power to hold lands, see *In re Registrar General*, 21 L. R. (N. S. W.) (L.) 225. — The articles can not authorise a contract to release a shareholder from liability for calls. — *Colonial Finance, etc., Co. v. Goldschmidt*, (1908), S. R. (N. S. W.) 164. *Semble*, a contract whereby a company is bound to sell assets at a fixed price, but the purchaser is given the right to rescind within a certain time is not *ultra vires*, but may be beyond the powers of the directors. — *Hearn v. Central, etc., Co.*, 16 L. R. (N. S. W.) (Eq.) 87; 5 B. C. (N. S. W.) 90. The burden of proof that a contract is *ultra vires* is upon the party asserting the invalidity of the transaction. — *John Bridge & Co. v. Magrath*, 4 S. R. (N. S. W.) 441; 21 W. N. (N. S. W.) 159. — The articles of association filed with the memorandum may be looked at as a contemporaneous document for the purpose of interpreting the terms of the memorandum of association. — *In re Anglo-Australian Investment Co.*, 14 L. R. (N. S. W.) (Eq.) 97; 3 B. C. (N. S. W.) 97. — Signing a draft memorandum of association, and agreeing to take shares in the company when formed, does not make a person a shareholder. — *In re Wattamolla Dairy Co.*, 3 B. C. (N. S. W.) 21. *Quære*, whether the addresses and descriptions of the subscribers need be given. The defect, if it was one, was cured by the certificate of registration. — *Sydney Brick Co. v. Speare*, 14 L. R. (N. S. W.) (Eq.) 350; 10 W. N. (N. S. W.) 10; 4 B. C. (N. S. W.) 8.

Mode of limiting liability of members. 6. The liability of the members of a company formed or registered under this Part of this Act may, according to the memorandum of association, be limited either to: a) The amount (if any) unpaid on the shares respectively held by them; or b) Such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound-up. — E. § 2; V. a. (No. 1074) 6; T. a. (33 Vic. No. 22) 7; S. A. a. (No. 557) 10; Q. e. (27 Vic. No. 4) 6; W. A. a. (56 Vic. No. 8) 10; N. Z. 14.

Memorandum of association of a company limited by shares. 7. The memorandum of association of a company limited by shares shall contain the following things (that is to say): a) The name of the proposed company with the addition of the word "limited" as the last word in such name; b) The place in New South Wales in which the registered office of the company is proposed to be situate; c) The objects for which the proposed company is to be established; d) A declaration that the liability of the members is limited; e) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount. Subject to the following regulations: i) That no subscriber of the memorandum of association shall take less than one share; ii) That each such subscriber shall write opposite to his name the number of shares he takes. — E. § 3; V. a. (No. 1074) 7; T. a. (33 Vic. No. 22) 8; S. A. a. (No. 557) 11, 12; Q. e. (27 Vic. No. 4) 7; W. A. a. (56 Vic. No. 8) 11, 13; N. Z. 15, 18.

Memorandum of association of a company limited by guarantee. 8. The memorandum of association of a company limited by guarantee shall contain the following things (that is to say): a) The name of the proposed company with the addition of the word "limited" as the last word in such name; b) The place in New South Wales in which the registered office of the company is proposed to be situate; c) The objects for which the proposed company is to be established; d) A declaration that each member undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount. — E. § 4; V. a. (No. 1074) 10; T. a. (33 Vic. No. 22) 9; Q. e. (27 Vic. No. 4) 8; N. Z. 16.

Memorandum of association of an unlimited company. 9. The memorandum of association of an unlimited company shall contain the following things (that is to say): a) The name of the proposed company; b) The place in New South Wales in which the registered office of the company is proposed to be situate; c) The objects for which the proposed company is to be established. — E. § 5; V. a. (No. 1074) 11; T. a. (33 Vic. No. 22) 10; S. A. a. (No. 557) 11 (2); Q. e. (27 Vic. No. 4) 9; W. A. a. (56 Vic. No. 8) 11 (2); N. Z. 17.

Signature and effect of memorandum of association. 10. The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and shall when registered bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and as if there were in the memorandum contained a covenant on the part of himself, his heirs, executors, and administrators, to observe all the conditions of such memorandum, subject to the provisions of this Act. — E. §§ 6, 14; V. a. (No. 1074) 12; T. a. (33 Vic. No. 22) 11; S. A. a. (No. 557) 14; W. A. a. (56 Vic. No. 8) 15; N. Z. 19, 20.

Power of certain companies to alter memorandum of association. 11. Any company limited by shares may so far modify the conditions contained in its memorandum of association if authorised to do so by its regulations as originally framed or as altered by special resolution in manner hereinafter mentioned as to: a) Increase its capital by the issue of new shares of such amount as it thinks expedient; or, b) Consolidate and divide its capital into shares of larger amount than its existing shares; or, c) Convert its paid-up shares into stock; but, save as aforesaid, and save as is hereinafter provided in the case of a change of name and of reduction of capital, no alteration shall be made by any company in the conditions contained in its memorandum of association. — E. §§ 7, 41; V. a. (No. 1074) 13, f. (No. 1482) 51; T. a. (33 Vic. No. 22) 12; S. A. a. (No. 557) 14 (2); Q. e. (27 Vic. No. 4) 11; W. A. a. (56 Vic. No. 8) 15; N. Z. 42; Cp. c. (No. 22 of 1906) § 3—6, *infra*.

Articles of association.

Regulations to be prescribed by articles of association. 12. 1. The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. 2. The articles shall be expressed in separate paragraphs numbered arithmetically, and they may adopt all or any of the provisions contained in the Table marked A in the Second Schedule hereto. 3. In the case of a company whether limited by guarantee or unlimited the articles shall, for the purpose of enabling the Registrar to determine the fees payable on registration, state: a) where the capital is divided into shares, the amount of capital with which the company proposes to be registered; b) where the capital is not divided into shares, the number of members with which the company proposes to be registered. 4. In a company limited by guarantee or unlimited and having a capital divided into shares each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes. — E. §§ 5, 10, 12; V. a. (No. 1074) 14; T. a. (33 Vic. No. 22) 14; S. A. a. (No. 557) 15; Q. e. (27 Vic. No. 4) 13; W. A. a. (56 Vic. No. 8) 16; N. Z. 22. — *Semble*, it is not necessary that the articles of association be signed by all the persons who signed

the memorandum. It is sufficient if it be signed by seven of them. — *In re Australian Banking Co.*, 12 L. R. (N. S. W.) (Eq.) 237; 2 B. C. (N. S. W.) 26.

Application of Table A. of second Schedule. 13. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A in the second Schedule hereto, the last-mentioned regulations shall so far as the same are applicable be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered. — E. § 11; V. a. (No. 1074) 15; T. a. (33 Vic. No. 22) 15; S. A. a. (No. 557) 16; Q. e. (27 Vic. No. 4) 14; W. A. a. (No. 56 Vic. No. 8) 17; N. Z. 23.

Signature and effect of articles of association. 14. 1. The articles of association shall be printed and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. 2. When registered they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles subject to the provisions of this Act. 3. All moneys payable by any member to the company, in pursuance of any of the conditions and regulations of the company, shall be deemed to be a specialty debt due from such member to the company. — E. §§ 12, 14; V. a. (No. 1074) 16; T. a. (33 Vic. No. 22) 16; S. A. a. (No. 557) 18; Q. e. (27 Vic. No. 4) 15; W. A. a. (56 Vic. No. 8) 19; N. Z. 24. — So long as the articles remain unaltered a majority can not deprive a minority of the shareholders of rights vested in them by the articles. — *Davis v. Commercial, etc., Co.*, 1 S. R. (N. S. W.) (Eq.) 37; 18 W. N. (N. S. W.) 104.

General provisions.

Registration of memorandum of association and articles of association. 15. 1. The memorandum of association and the articles of association (if any) shall be delivered to the Registrar, who shall retain and register the same. 2. There shall be paid to the Registrar the several fees specified in Table B. in the second Schedule hereto as therein directed or such smaller fees as the Governor may direct. — E. § 17; V. a. (No. 1074) 17; T. a. (33 Vic. No. 22) 17; S. A. a. (No. 557) 19 (1), 250; Q. e. (27 Vic. No. 4) 16; W. A. a. (56 Vic. No. 8) 20 (1), 250; N. Z. 26 (1). — An association not registered has no *locus standi* as plaintiff. — *Waller v. Gipps*, 6 L. R. (N. S. W.) (Eq.) 40, 123; 1 W. N. (N. S. W.) 135. A company may be estopped from denying that it is registered. — *In re Morning Star G. M. Co.*, 2 S. C. R. (N. S.) (Eq.) (N. S. W.) 14.

Effect of registration. 16. 1. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Part of this Act, or by the desire of the parties, to be registered, the Registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited. 2. The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal, with power to hold lands and to sue and be sued in all courts, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned. 3. A certificate of the incorporation of any company given by the Registrar shall be conclusive evidence that all the requisitions of this Part of this Act in respect of registration have been complied with. — E. § 16; V. a. (No. 1074) 18; T. a. (33 Vic. No. 22) 18; S. A. a. (No. 557) 19 (2, 3), 20; Q. e. (27 Vic. No. 4) 17; W. A. a. (56 Vic. No. 8) 20 (2, 3) 21; N. Z. 26 (3—5).

Certificate to be evidence. 17. Any certificate of the incorporation of a company given by the Registrar, or by any Assistant Registrar for the time being, shall be received in evidence as if it were the original certificate. — E. § 17; V. f. (No. 1482) 52 (1), 164; T. c. (59 Vic. No. 19) 27; S. A. a. (No. 557) 236; W. A. a. (56 Vic. No. 8) 93; N. Z. 12.

Division 2. Distribution of capital and liability of members.

Distribution of capital.

Definition of "members". 18. The subscribers of the memorandum of association of any company under this Part of this Act shall be deemed to have agreed

to become members of the company whose memorandum they have subscribed, and, upon the registration of the company, shall be entered as members on the register of members hereinafter mentioned, and every other person who has agreed to become a member of a company under this Part of this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company. — E. § 24; V. a. (No. 1074) 24; T. a. (33 Vic. No. 22) 23; S. A. a. (No. 557) 26; Q. e. (27 Vic. No. 4) 22; W. A. a. (56 Vic. No. 8) 27; N. Z. 21.

Register of members. 19. 1. Every company formed or registered under this Part of this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars: a) The names and addresses and the occupations (if any) of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member; b) The date at which the name of any person was entered in the register as a member; c) The date at which any person ceased to be a member. 2. Any company acting in contravention of this section, and every director or manager of such company who knowingly and wilfully authorises or permits such contravention, shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues. — E. § 25; V. a. (No. 1074) 26; T. a. (33 Vic. No. 22) 25; S. A. a. (No. 557) 28; Q. e. (27 Vic. No. 4) 24; W. A. a. (56 Vic. No. 8) 29; N. Z. 100.

Annual list of members. 20. 1. Every company formed or registered under this Part of this Act having a capital divided into shares shall make once at least in every year a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company. 2. Such list shall contain a summary specifying the following particulars: a) The names and addresses and occupations of such members and the number of shares held by each of them; b) The amount of the capital of the company, and the number of shares into which it is divided; c) The number of shares taken from the commencement of the company up to the date of the summary; d) The amount of calls made on each share; e) The total amount of calls received; f) The total amount of calls unpaid; g) The total amount of shares forfeited; h) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them. 3. The above list and summary shall be contained in a separate part of the register of members, and shall be completed within seven days after such fourteenth day, as is mentioned in this section, and a copy shall forthwith be forwarded to the Registrar. — § 26; V. a. (No. 1074) 27; T. a. (33 Vic. No. 22) 26; S. A. a. (No. 557) 29; Q. e. (27 Vic. No. 4) 25; W. A. a. (56 Vic. No. 8) 30; N. Z. 101 (1—2).

Penalty on company not keeping a proper register. 21. If any company formed or registered under this Part of this Act having a capital divided into shares makes default in complying with the provisions of this Part of this Act, with respect to forwarding such list of members or summary, as is hereinbefore mentioned, to the Registrar, such company, and every director and manager of such company who knowingly and wilfully authorises or permits such default, shall incur a penalty not exceeding five pounds for every day during which such default continues. — E. § 26 (5); V. a. (No. 1074) 28; T. a. (33 Vic. No. 22) 27; S. A. a. (No. 557) 30; Q. e. (27 Vic. No. 4) 26; W. A. a. (56 Vic. No. 8) 31; N. Z. 101 (3).

Company to give notice of consolidation or of conversion of capital into stock. 22. Every company formed or registered under this Part of this Act having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the Registrar of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted. — E. § 42; V. a. (No. 1074) 29; T. a. (33 Vic. No. 22) 28; S. A. a. (No. 557) 76; Q. e. (27 Vic. No. 4) 27; W. A. a. (56 Vic. No. 8) 78; N. Z. 40.

Effect of conversion of shares into stock. 23. Where any company formed or registered under this Part of this Act having a capital divided into shares has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Part of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock,

and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required. — E. § 43; V. a. (No. 1074) 30; T. a. (33 Vic. No. 22) 29; S. A. a. (No. 557) 77; Q. e. (27 Vic. No. 4) 28; W. A. a. (56 Vic. No. 8) 79; N. Z. 41.

Notice of increase of capital and number of members. 24. 1. Notice shall be given to the Registrar: a) Where a company has a capital divided into shares, whether such shares have been converted into stock or not, of any increase in such capital beyond the registered capital; b) Where a company has not a capital divided into shares, of any increase in the number of members beyond the registered number, within fifteen days from the date on which such increase of capital or number of members, as the case may be, is resolved on or takes place; and the Registrar shall forthwith record the amount of such increase of capital or number of members. 2. If such notice is not given within the period aforesaid, the company in default, and every director and manager of such company who knowingly and wilfully authorises or permits such default, shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues. — E. § 44; V. a. (No. 1074) 35; T. a. (33 Vic. No. 22) 36; S. A. a. (No. 557) 75; Q. e. (27 Vic. No. 4) 33; W. A. a. (56 Vic. No. 8) 77; N. Z. 43.

Power to keep extra-colonial registers. 25. Any company formed or registered under this Part of this Act whose objects comprise the transaction of business in the United Kingdom or elsewhere may, if authorised so to do by its regulations as originally framed or as altered by special resolution, cause to be kept in the United Kingdom, and in any place elsewhere within Her Majesty's Dominions in which it transacts business, a branch register of the members there resident. — E. § 34; V. f. (No. 1482) 61; Q. f. (53 Vic. No. 18) 32 (1); N. Z. 111 (1).

Notice to Registrar. 26. Such company shall give to the Registrar notice of the situation of every office where any such branch register (in this Act called an extra-colonial register) is kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued. — E. § 34; V. f. (No. 1482) 62; Q. f. (53 Vic. No. 18) 32 (2).

Registers how kept or closed, etc. 27. 1. An extra-colonial register shall, as regards the particulars entered therein, be deemed to be part of the company's register of members, and shall be evidence of all particulars entered therein. 2. Every such register shall be kept in the manner provided by this Part of this Act, except that the advertisement mentioned in section two hundred and forty of this Act shall be inserted in some newspaper circulating in the district wherein the register of members to be closed is kept. — E. § 35 (1, 2); V. f. (No. 1482) 63, 64; Q. f. (53 Vic. No. 18) 32 (3—4); N. Z. 111 (2), 113.

Ss. 232 and 239 to apply to extra-colonial registers. 28. Sections two hundred and thirty-two and two hundred and thirty-nine of this Act shall equally apply to entries in extra-colonial registers as to entries in the principal register of the company, and the Supreme Court and Judges shall have the same jurisdiction in respect of entries in such extra-colonial registers as by those sections is provided with respect to entries in the principal register of members.

Duplicates of registers, etc. 29. Such company shall cause to be transmitted to its registered office a copy of every entry in its extra-colonial registers, as soon as may be after such entry is made, and shall keep at such office entered up from time to time duplicates of such registers, and the provisions of section two hundred and thirty-nine of this Act shall apply to every such duplicate, and such duplicate shall for all the purposes of this Act be deemed to be part of the register of members of the company. — E. § 35 (3); V. f. (No. 1482) 65; Q. f. (53 Vic. No. 18) 32 (5); N. Z. 112.

Extra-colonial shares to be distinct. 30. Subject to the foregoing provisions of this Act with respect to duplicate registers, the shares registered in an extra-colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to shares registered in an extra-colonial register shall, during the continuance of the registration of such shares therein, be registered in any other register. — E. § 35 (4); V. f. (No. 1482) 66; Q. f. (53 Vic. No. 18) 32 (6); N. Z. 113.

Discontinuance of any register. 31. Such company may discontinue any extra-colonial register, and thereupon all entries in that register shall be transferred to

some other register kept by the company in the same place or district, or to the register of members kept at the registered office of the company. — E. § 35 (5); V. f. (No. 1482) 67; Q. f. (53 Vic. No. 18) 32 (7); N. Z. 115.

Companies may make regulations. 32. Subject to the foregoing provisions of this Act, any company may, by special resolution, make such provisions as it thinks fit respecting the keeping of extra-colonial registers. — E. § 35 (6); V. f. (No. 1482) 68; Q. f. (53 Vic. No. 18) 32 (9); N. Z. 117.

Liability of members.

Liability of present and past members of company. 33. In the event of a company formed or registered under this Part of this Act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves with the qualifications following (that is to say): a) No past member shall be liable to contribute if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up; b) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member; c) No past member shall be liable to contribute unless it appears to the Court or other authority, in, by, or under which the company is being wound-up, that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act; d) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member; e) In the case of a company limited by guarantee no contributions shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association; f) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract; g) No sum due to any member of a company in his character of a member by way of dividends, profits, or otherwise shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company, but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves. — E. § 123; V. a. (No. 1074) 39; T. a. (33 Vic. No. 22) 40; S. A. a. (No. 557) 99; Q. e. (27 Vic. No. 4) 37; W. A. a. (56 Vic. No. 8) 101; N. Z. 66—68.

Companies may have directors with unlimited liability. 34. Where a company is formed or registered as a limited company, the liability of the directors or managers of such company, or the managing director may, if so provided by the memorandum of association, be unlimited. — E. § 60 (1); S. A. a. (No. 557) 13; Q. f. (53 Vic. No. 18) 18; W. A. a. (56 Vic. No. 8) 14; N. Z. 82.

Liability of directors past and present where liability is unlimited. 35. The following modifications shall be made in the thirty-third section of this Act with respect to the contributions to be required, in the event of the winding-up of a limited company, from any director or manager whose liability is unlimited: a) Subject to the provisions hereinafter contained any such director or manager, whether past or present, shall in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company; b) No contribution required from any past director or manager, who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company; c) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company; d) Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member unless the court deems it necessary to

require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up. — E. § 123 (2); S. A. a. (No. 557) 100; W. A. a. (56 Vic. No. 8) 102; N. Z. 86.

Director with unlimited liability may have set-off. 36. In the event of the winding-up of a limited company, the Court may make to any director or manager thereof, whose liability is unlimited, the same allowance by way of set-off as under section one hundred and ten of this Act it may make to a contributory where the company is not limited. — E. § 165; S. A. a. (No. 557) 122 (2); W. A. a. (56 Vic. No. 8) 125 (2); N. Z. 86 (5).

Notice to be given to director on his election that his liability will be unlimited. 37. 1. In any limited company in which the liability of a director or manager is unlimited, the director or manager of the company (if any), and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, managers, and secretary (if any) of such company, or one of them, shall, before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited. 2. If any director, manager, or proposer makes default in adding such statement, or if any promoter, director, manager, or secretary makes default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds, and also for any damage which the person so elected or appointed may sustain from such default, but the liability of the person elected or appointed shall not be affected by such default. — E. § 60; S. A. a. (No. 557) 230; W. A. a. (56 Vic. No. 8) 230; N. Z. 83.

Existing limited company may by special resolution make liability of directors unlimited. 38. 1. Any limited company may by a special resolution, if authorised so to do by its regulations as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers, or of the managing director. 2. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution, and any default in this respect shall be deemed to be a default in complying with the provisions of the two hundred and fiftieth section of this Act, and shall be punished accordingly. — E. § 61; S. A. a. (No. 557) 68 (7); W. A. a. (56 Vic. No. 8) 70 (7); N. Z. 84.

Reduction of capital and shares.

Power to company to reduce capital. 39. 1. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital, either by cancelling any shares which at the date of the passing of such resolution have not been taken, or agreed to be taken, by any person, or otherwise. 2. No such resolution for reducing the capital of a company, except by cancelling shares as aforesaid, shall come into operation until an order of the Court is registered by the Registrar as hereinafter mentioned. 3. Where any such company reduces its capital by cancelling any shares as aforesaid, the provisions of this Act shall not apply to any such reduction of capital. — E. § 46; V. f. (No. 1482) 88 (1); T. e. (6 Edw. 7, No. 25) 4, 5; S. A. a. (No. 557) 68 (6), 70; Q. f. (53 Vic. No. 18) 8; W. A. a. (56 Vic. No. 8) 70 (5), 72; N. Z. 44, 56. — For cases where the court sanctioned a reduction of capital, see *In re Picturesque Atlas Co.*, 13 L. R. (N. S. W.) 44; 2 B. C. (N. S. W.) 76; *In re Donaldson*, 5 S. R. (N. S. W.) 725; 22 W. N. (N. S. W.) 235, and cases cited in note to § 41, *infra*. As to what should be stated in application, see *In re Metropolitan, etc., Association*, 19 W. N. (N. S. W.) 31.

Construction of "capital" and powers to reduce capital. 40. 1. The word "capital" as used in this Part of this Act shall include paid-up capital, and the power to reduce capital conferred by this Part of this Act shall include a power: a) To cancel any lost capital, or any capital unrepresented by available assets; b) To pay off any capital which may be in excess of the wants of the company. 2. Paid-up capital may be reduced, either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and, to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved, anything contained in this Act to the contrary notwithstanding.

— E. § 46; V. f. (No. 1482) 98; T. d. (60 Vic. No. 3) 9, e. (6 Edw. 7, No. 25) 2; S. A. a. (No. 557) 68 (5); Q. f. (53 Vic. No. 18) 4; W. A. a. (56 Vic. No. 8) 70 (5); N. Z. 53.

Company to add "and reduced" to its name for a limited period. Exceptions.

41. 1. Such company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the company within the meaning of this Act. 2. Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, it shall not be necessary before the hearing of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced" as mentioned in this Act. — E. § 48; V. f. (No. 1482) 88 (2), 99; T. d. (60 Vic. No. 3) 4, 9; S. A. a. (No. 557) 69, 70 (4); Q. f. (53 Vic. No. 18) 5, 7; W. A. a. (56 Vic. No. 8) 71, 72 (4); N. Z. 53. — For cases where the court dispensed with the addition of the words "and reduced" see *In re Balmain, etc., Co.*, 4 B. C. (N. S. W.) 52; *In re Australian J. S. Bank*, 5 S. R. (N. S. W.) 44; 21 W. N. (N. S. W.) 210.

Company to apply to the Court for an order confirming reduction. 42. A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and on the hearing of the petition the Court, if satisfied that, with respect to every creditor who, under the provisions of this Act, is entitled to object to the reduction either: a) His consent to the reduction has been obtained; or b) His debt or claim has been discharged, or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit. — E. § 47, 50; V. f. (No. 1482) 89; T. d. (60 Vic. No. 3) 5; S. A. a. (No. 557) 70 (1, 6); Q. f. (53 Vic. No. 18) 6; W. A. a. (56 Vic. No. 8) 72 (1, 6); N. Z. 44.

Creditors may object to reduction. Exceptions. Procedure. 43. 1. Where a company proposes to reduce its capital, every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object. 2. Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital, the creditors of the company shall not, unless the Court otherwise directs, be entitled to object or required to consent to the reduction. 3. The Court shall settle a list of the creditors entitled to object, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor: a) The names of such creditors; and b) The nature and amount of their debts or claims; and may publish notices fixing a certain day or days within which creditors who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction. — E. § 49 (1, 2); V. f. (No. 1482) 90; T. d. (60 Vic. No. 3) 7; S. A. a. (No. 557) 70 (3, 5); Q. f. (53 Vic. No. 18) 9; W. A. a. (56 Vic. No. 8) 72 (3, 5); N. Z. 45.

Court may dispense with consent of creditor on security being given for the defendant. 44. Where a creditor whose name is entered on the list of creditors and whose debt or claim is not discharged or determined does not consent to the proposed reduction, the Court may dispense with such consent on the company securing the payment of the debt or claim of such creditor, by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as hereinafter mentioned, that is to say: a) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company is willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated; b) If the company does not admit, or is unwilling to set apart and appropriate such full amount, or if the amount is contingent or not ascertained, the Court may inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated. — E. § 49 (3); V. f. (No. 1482) 91; T. d. (60 Vic. No. 3) 8; S. A. a. (No. 557) 70 (6, 7); Q. f. (53 Vic. No. 18) 10; W. A. a. (56 Vic. No. 8) 72 (6, 7); N. Z. 46.

Publication of reasons for reduction of capital may be ordered. 45. The Court may require the company to publish all or any of the following particulars in such manner as it thinks fit: a) The reasons for the reduction of its capital; b) Such other information in regard to the reduction of its capital as the Court may think expedient with a view to giving proper information to the public in relation to the reduction of its capital by the company; c) The causes which led to such reduction. — E. § 55; V. f. (No. 1482) 100; T. d. (60 Vic. No. 3) 10; S. A. a. (No. 557) 70 (2); Q. f. (53 Vic. No. 18) 7; W. A. a. (56 Vic. No. 8) 72 (2); N. Z. 54.

Order and minute to be registered. 46. 1. The Registrar, upon the production to him of an order of the Court, confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute, approved by the Court, showing with respect to the capital of the company as altered by the order: a) The amount of such capital; b) The number of shares in which it is to be divided; c) The amount of each share; d) The amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect. 2. Notice of such registration shall be published in such manner as the Court may direct. 3. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute. — E. § 51; V. f. (No. 1482) 92, 100; T. d. (60 Vic. No. 3) 11; S. A. a. (No. 557) 71; Q. f. (53 Vic. No. 18) 11; W. A. a. (56 Vic. No. 8) 73; N. Z. 47.

Minute to form part of memorandum of association. 47. 1. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alteration as if it had been originally contained in the memorandum of association. 2. Subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute. — E. § 52; V. f. (No. 1482) 93; T. d. (60 Vic. No. 3) 12; S. A. a. (No. 557) 72 (1); Q. f. (53 Vic. No. 18) 12; W. A. a. (56 Vic. No. 8) 74 (1); N. Z. 47.

Saving of rights of creditors who are ignorant of proceedings. 48. 1. If any creditor who is entitled, in respect of any debt or claim, to object to the reduction of the capital of a company is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the eighty-sixth section of this Act, to pay to such creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration. 2. If the company is wound up, the Court, on the application of such creditor and on proof that he was so ignorant as aforesaid, may settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up. 3. The provisions of this section shall not affect the rights of the contributories of the company among themselves. — E. § 53; V. f. (No. 1482) 94; T. d. (60 Vic. No. 3) 13; S. A. a. (No. 557) 73; Q. f. (53 Vic. No. 18) 13; W. A. a. (56 Vic. No. 8) 75; N. Z. 48.

Copy of registered minute. 49. 1. A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration. 2. A company which makes default in complying with the provisions of this section, and every director and manager of such company who knowingly authorises or permits such default, shall incur a penalty not exceeding one hundred pounds for each copy in respect of which such default is made. — E. § 52; V. f. (No. 1482) 95; T. d. (60 Vic. No. 3) 14; S. A. a. (No. 557) 72 (2); Q. f. (53 Vic. No. 18) 14; W. A. a. (56 Vic. No. 8) 74 (2); N. Z. 49.

Penalty on concealment of name of creditor. 50. If any director, manager, or officer of the company: a) Wilfully conceals the name of any creditor who is

entitled to object to the proposed reduction; or b) Wilfully misrepresents the nature or amount of the debt or claim of any creditor; or c) Being a director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, he shall be guilty of a misdemeanour. — E. § 54; V. f. (No. 1482) 96; T. d. (60 Vic. No. 3) 15; S. A. a. (No. 557) 74; Q. f. (53 Vic. No. 18) 16; W. A. a. (56 Vic. No. 8) 76; N. Z. 50.

Subdivision of shares.

Shares may be divided into shares of a smaller amount. 51. 1. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as by subdivision of its existing shares or any of them to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association. 2. In the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing shares from which the shares of reduced amount are derived. 3. The statement of the number and amount of the shares into which the capital of the company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution shall be in accordance with such resolution, and any company which makes default in complying with the provisions of this subsection, and every director and manager of such company who knowingly or wilfully authorises or permits such default, shall incur a penalty not exceeding one pound for each copy in respect of which such default is made. — E. § 41; V. a. (No. 1074) 8, 9; T. a. (33 Vic. No. 22) 30, 31; S. A. a. (No. 557) 68 (3), 70—72; Q. f. (53 Vic. No. 18) 16, 17; W. A. a. (56 Vic. No. 8) 70 (3), 72—74; N. Z. 38, 39.

[§§ 52—53 relate to associations formed for purposes not of gain, and prohibit such associations from holding more than two acres of land, except under certain circumstances.]

Calls upon shares.

Company may have some shares fully paid and others not. 54. Nothing in this Act shall be deemed to prevent any company formed or registered under this Part of this Act, if authorised by its regulations as originally framed, or as altered by special resolution, from doing any one or more of the following things, namely: a) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid; b) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him either in discharge of the amount of a call payable in respect of any other shares held by him or without any call having been made; c) Paying dividends in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others. — E. § 39; T. a. (33 Vic. No. 22) 41; S. A. a. (No. 557) 79; Q. f. (53 Vic. No. 18) 27; W. A. a. (56 Vic. No. 8) 81; N. Z. 36.

Manner in which shares are to be issued and held. 55. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the mode of such payment has been otherwise determined by a contract duly made in writing and filed with the Registrar at or before the issue of such share. — T. a. (33 Vic. No. 22) 42; S. A. a. (No. 557) 25; Q. f. (53 Vic. No. 18) 28; W. A. a. (56 Vic. No. 8) 26; See also b. (No. 47 of 1900) *infra*. — But even if the contract is not registered and the shares not paid for, the shareholder is liable only for a sum sufficient to meet the claims of creditors and the costs of liquidation. — *Annandale C. M. Co. v. Marsden*, 15 L. R. (N. S. W.) (Eq.) 158; 11 W. N. (N. S. W.) 66. Where a person is a creditor of a company and shares are subsequently issued to him in payment of his claim no registration is required. — *In re Mulgoa Irrigation Co.*, 5 B. C. (N. S. W.) 13; *In re North Sydney Investment Co.*, 16 L. R. (N. S. W.) (Eq.) 242; 6 B. C. (N. S. W.) 17; 20 L. R. (N. S. W.) (Eq.) 18; 9 B. C. (N. S. W.) 49. Cp. *In re Phillip Stephan, etc., Co.*, 12 L. R. (N. S. W.) (Eq.) 11; 1 B. C. (N. S. W.) 18, 53; *In re Dudley Coal Co.*, 8 B. C. (N. S. W.) 54. The consideration of the contract registered must appear upon its face. It is not sufficient that it appears in an unregistered agreement recited in the registered contract. — *In re Lode Hill T. M. Co.*, 2 B. C. (N. S. W.) 87; 3 B. C. (N. S. W.) 18, 68. This is required even though the contract be under seal. — *Ibid*. A statement in the memorandum of association that shares are to be issued as fully paid does not dispense with the necessity of registration. — *In re Phillip Stephan, etc., Co.*, 12 L. R. (N. S. W.) 11; 1 B. C. (N. S. W.) 18, 53. But, *semble*, a company may be estopped by the representation of its officers from

denying that a contract has been duly registered. — Ibid. The directors of a company, even though authorised by a provision in the articles of association, can not release a shareholder from liability from payment of either past or future calls. — *Colonial Finance, etc., Co. v. Goldschmidt* (1908), S. R. (N. S. W.) 164 (affirmed on appeal, 8 C. L. R. 241). As to signatures to the contract see *In re Hidden Star G. M. Co.*, 10 L. R. (N. S. W.) (Eq.) 35; *In re New England G. M. Co.*, 13 L. R. (N. S. W.) (Eq.) 171; 2 B. C. (N. S. W.) 55; 3 B. C. (N. S. W.) 43. On the general question see further; *In re Root Hog G. M. Co.*, 2 B. C. (N. S. W.) 65; *In re Bonang G. M. Co.*, 14 L. R. (N. S. W.) (Eq.) 262, 347; 17 L. R. (N. S. W.) (Eq.) 220; 4 B. C. (N. S. W.) 1, 31; 7 B. C. (N. S. W.) 6. Also cases in note to § 232, *infra*.

Transfer of shares.

Transfer may be registered at request of transferor. 56. A company shall, on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee. — E. § 28; V. f. (No. 1482) 169; T. c. (59 Vic. No. 19) 10; S. A. a. (No. 557), Sched. II, 18; Q. f. (53 Vic. No. 18) 30; W. A. a. (56 Vic. No. 8) Sched. II, 18; N. Z. 34.

Share warrants to bearer.

Warrant of limited shares fully paid up may be issued in name of bearer. 57. A company limited by shares, if authorised so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to shares which are fully paid up, or with respect to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise for the payment of future dividends on the shares or stock included in such warrant, hereinafter referred to as a share warrant. — E. § 37 (1); N. Z. 58 (1).

Effect of share warrant. 58. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant. — E. § 37 (2); N. Z. 58 (2).

Re-registration of bearer of a share warrant in the register. 59. 1. The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members. 2. The company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled. — E. § 37 (3); N. Z. 59.

Regulations of the company may make the bearer of a warrant a member. 60. The bearer of a share warrant may, if the regulations of a company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations: Provided that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant to be a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company. — E. § 37 (4); N. Z. 60.

Entries in register where share warrant issued. 61. 1. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars: a) The fact of the issue of the warrant; b) A statement of the shares or stock included in the warrant, distinguishing each share by its number; c) The date of the issue of the warrant. 2. Until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the nineteenth section of this Act to be entered in the register of members of a company. 3. On the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member. — E. § 37 (5, 6); N. Z. 61, 62.

Particulars to be contained in annual summary. 62. After the issue by the company of a share warrant the annual summary required by the twentieth section of this Act shall contain the following particulars: a) The total amount of shares or stock for which share warrants are outstanding at the date of the summary; b) The total amount of share warrants which have been issued and surrendered

respectively since the last summary was made; c) The number of shares or amount of stock comprised in each warrant. — E. §§ 26, 37; N. Z. 63.

[§§ 63—65 fix the punishment for the forgery of or uttering forged share warrants, coupons, etc., for falsely personating owner of shares, or for unauthorised engraving of plates, etc. for the printing of such instruments.]

Prospectus, etc., to specify dates and names of parties to any contract made prior to issue of such prospectus, etc. 66. Every prospectus of a company to be formed under this Part of this Act, and every notice inviting persons to subscribe for shares in any joint stock company, shall specify the names of the parties to and date of any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company or otherwise. And any prospectus not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he has had notice of such contract. — E. § 81; V. f. (No. 1482) 104; T. a. (33 Vic. No. 22) 21; S. A. a. (No. 557) 221—224; Q. f. (53 Vic. No. 18) 31; W. A. a. (56 Vic. No. 8) 222—225; N. Z. 74—81. — A false representation of intention contained in a prospectus may amount to a misrepresentation of fact. — *In re New Brighton, etc., Co.*, 10 L. R. (N. S. W.) (Eq.) 66. *Cp. Bendemeer T. M. Co. v. Newton*, 8 L. R. (N. S. W.) (L.) 28; 3 W. N. (N. S. W.) 98; *De Kantzow v. Inglis*, 10 L. R. (N. S. W.) (L.) 97; 6 W. N. (N. S. W.) 110.

Division 3. Management and administration.

Provisions for protection of creditors.

Publication of name by a limited company. 67. Every limited company shall: a) Paint or affix and keep painted or affixed its name on the outside of every office or place in which the business of the company is carried on in a conspicuous position in letters easily legible; and b) Have its name engraved in legible characters on its seal; and c) Have its name mentioned in legible characters: i) In all notices, advertisements, and other official publications of the company; ii) In all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company; iii) in all bills of parcels, invoices, receipts, and letters of credit of the company. — E. § 63; V. a. (No. 1074) 41; T. a. (33 Vic. No. 22) 45; S. A. a. (No. 557) 40 (1); Q. e. (27 Vic. No. 4) 40; W. A. a. (56 Vic. No. 8) 41 (1); N. Z. 126. — The seal referred to in (b) may be an adhesive paper label bearing the name and address of the company in print. — *Hoe v. Lee*, 3 S. R. (N. S. W.) 30; 20 W. N. (N. S. W.) 23.

Penalties on non-publication of name. 68. 1. Any limited company which does not paint or affix and keep painted or affixed its name in manner directed by this Part of this Act, and every director or manager of such company who knowingly and wilfully authorises or permits such default, shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name and a further penalty not exceeding five pounds for every day during which such name is not kept so painted or affixed. 2. If any director, manager, or officer of such company, or any person on its behalf: a) Uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid; or b) Issues or authorises the issue of any notice, advertisement, or other official publication of such company, or signs or authorises to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, or order for money or goods without its name being mentioned therein in manner aforesaid; or c) Issues or authorises to be issued any bill of parcels, invoice receipt, or letter of credit of the company, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof unless the same is duly paid by the company. — E. § 63; V. a. (No. 1074) 42; T. a. (33 Vic. No. 22) 46; S. A. a. (No. 557) 40 (2); Q. e. (27 Vic. No. 4) 41; W. A. a. (56 Vic. No. 8) 41 (2); N. Z. 127, 128.

[§ 69 relates to statements to be made by limited banking companies, by insurance companies and by benefit, provident and deposit societies.]

List of directors to be sent to Registrar. 70. Every company formed or registered under this Part of this Act, not having a capital divided into shares, shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar a copy of such register, and shall from time to time notify to the Registrar any change that takes

place in such directors or managers. — E. § 75; V. a. (No. 1074) 45, f. (No. 1482) 166; T. a. (33 Vic. No. 22) 49; S. A. a. (No. 557) 43 (1); Q. e. (27 Vic. No. 4) 44; W. A. a. (56 Vic. No. 8) 45 (1); N. Z. 102 (1).

Penalty on company not keeping register of directors. 71. If any such company makes default in respect of any of the matters in the preceding section mentioned, such company, and every director or manager of such company who knowingly and wilfully authorises or permits such default, shall incur a penalty not exceeding five pounds for every day during which such default continues. — E. § 75; V. a. (No. 1074) 46; T. a. (33 Vic. No. 22) 50; S. A. a. (No. 557) 43 (2); Q. e. (27 Vic. No. 4) 45; W. A. a. (56 Vic. No. 8) 45 (2); N. Z. 102 (2).

Provisions for protection of members.

Power to alter regulations by special resolution. 72. 1. Subject to the provisions of this Act and to the conditions contained in the memorandum of association, any company formed under this Part of this Act, may, in general meeting, from time to time, by passing a special resolution: a) Alter all or any of the regulations of the company contained in the articles of association, or in the Table marked A in the second Schedule, where such Table is applicable to the company; or b) Make new regulations to the exclusion of, or in addition to, all or any of the regulations of the company. 2. Any regulations so made by special resolution shall be deemed to be regulations of the company, of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution. — E. § 13; V. a. (No. 1074) 51; T. a. (33 Vic. No. 22) 55; S. A. a. (No. 557) 48, 50; Q. e. (27 Vic. No. 4) 50; W. A. a. (56 Vic. No. 8) 50, 52; N. Z. 122. — See note to § 14, *supra*.

Declaration in action against members. 73. In any action or suit brought by a company against any member to recover any call or other moneys due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company and is indebted to the company in respect of a call made, or other moneys due, whereby an action or suit has accrued to the company. — V. a. (No. 1074) 69; T. a. (33 Vic. No. 22) 75; S. A. a. (No. 557) 61; Q. e. (27 Vic. No. 4) 69; W. A. a. (56 Vic. No. 8) 63; N. Z. 156.

Alteration of forms. 74. 1. The forms set forth in the third Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer. 2. The Governor may make such alterations in the Tables and forms contained in the second and third Schedules hereto, or such additions to the forms contained in the Third Schedule as he deems requisite; but no such alteration shall increase the amount of fees payable to the Registrar in the second Schedule mentioned. 3. Any such table or form when altered shall be published in the *Gazette*, and upon such publication being made such table or form shall have the same force as if it were included in the Schedule to this Act, but no alteration made by the Governor in the Table marked A contained in the second Schedule shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such table. — E. § 118; V. a. (No. 1074) 70; T. a. (33 Vic. No. 22) 76; S. A. a. (No. 557) 63; Q. e. (27 Vic. No. 4) 70; W. A. a. (56 Vic. No. 8) 65; N. Z. 324.

Arbitrations.

Power for companies to refer matters to arbitration. 75. 1. Any company formed or registered under this Part of this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration in accordance with the provisions of the *Arbitration Act, 1892*, or any Act amending or consolidating the same, any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company, or person. 2. The parties to the arbitration may delegate to the persons, to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by themselves, or by their directors or other managing body. — E. § 119; T. a. (33 Vic. No. 22) 78; S. A. a. (No. 557) 64; Q. e. (27 Vic. No. 4) 71; W. A. a. (56 Vic. No. 8) 66; N. Z. 159.

Provisions of 55 Vic. No. 32 to apply. 76. All the provisions of the *Arbitration Act, 1892*, or any Act amending or consolidating the same, shall be deemed to apply, so far as they are applicable, to arbitrations in pursuance of this Part of

this Act. — E. § 119; T. a. (33 Vic. No. 22) 77—105; S. A. a. (No. 557) 64; Q. e. (27 Vic. No. 4) 72; W. A. a. (56 Vic. No. 8) 66; N. Z. 159.

Appointment of arbitrators. 77. Every appointment of an arbitrator shall be made: a) On the part of such company: i) Under its common seal; or ii) Under the hand of the manager or secretary or any two directors of the company; or iii) Under the hand of the liquidator if the company is in liquidation; b) On the part of any other party, under the hand of such party; c) On the part of a corporation aggregate, under the common seal of such corporation.

Division 4. Winding-up.

Jurisdiction in Chambers. 78. Any of the powers vested in the Court by this division of this Act may be exercised in Chambers by the Chief Judge or Judge in Equity. — T. a. (33 Vic. No. 22) 116; Q. e. (27 Vic. No. 4) 82.

Preliminary.

Meaning of “contributory”. 79. 1. The term “contributory” shall mean every person liable to contribute to the assets of a company formed or registered under this Part of this Act in the event of the same being wound up, and shall also in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such proceedings, include any person alleged to be a contributory. 2. In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable at law or in equity to pay or contribute to the payment of: a) Any debt or liability of such company; or b) Any sum for the adjustment of the rights of the members amongst themselves; or c) The costs, charges, and expenses of winding-up; and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid. 2. In the event of a company registered under the provisions of Division six of this Part of this Act being wound up, in addition to the persons liable as contributories under subsection (1) of this section, every person shall be a contributory in respect of the debts and liabilities of the company contracted prior to registration who is liable to pay or contribute to the payment of: a) Any debt or liability of the company contracted prior to registration; or b) Any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or c) The costs, charges, and expenses of winding-up the company so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid. — E. §§ 124, 263 (24), 269; V. a. (No. 1074) 71, 176, 184; T. a. (33 Vic. No. 22) 106, c. (59 Vic. No. 19) 21; S. A. a. (No. 557) 3; Q. e. (27 Vic. No. 4) 73, 190, 194; W. A. a. (56 Vic. No. 8) 3; N. Z. 173. — An irregularity in the issue of shares can not be set up against creditors. — *In re Eveleen S. M. Co.*, 6 B. C. (N. S. W.) 4.

Liability of contributory. 80. 1. The liability of any person to contribute to the assets of a company in the event of the same being wound up under this Part of this Act, shall be deemed to create a debt of the nature of a specialty accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability. 2. In the case of the bankruptcy of any contributory, or person deemed to be a contributory, the estimated value of his liability to future calls, as well as calls already made, may be proved in his estate. — E. §§ 124, 263, 268; V. a. (No. 1074) 72, 176 (5), 184; T. a. (33 Vic. No. 22) 107, c. (59 Vic. No. 19) 21; S. A. a. (No. 557) 101, 190; Q. e. (27 Vic. No. 4) 74, 190 (5), 194; W. A. a. (56 Vic. No. 8) 103, 192; N. Z. 174. — The liability of a person residing in New South Wales on shares held in a foreign company is determined by the laws of the state of the domicile of the company. — *Grosvenor Hotel Co. v. Sale*, 9 B. C. (N. S. W.) 26.

Contributories in case of death. 81. If any contributory (or person deemed to be a contributory) dies, either before or after he has been placed on the list of contributories hereinafter mentioned, his executors or administrators shall be liable, in a due course of administration, to contribute to the assets of the company in discharge of the liability of such deceased contributory, and such executors and administrators shall be deemed to be contributories accordingly. — E. §§ 126, 263 (24), 269; V. a. (No. 1074) 73, 176 (5), 184; T. a. (33 Vic. No. 22) 108, c. (59 Vic. No. 19) 21 (2); S. A. a. (No. 557) 102, 190 (2); Q. e. (27 Vic. No. 4) 75, 190 (5), 194; W. A. a. (56 Vic. No. 8) 104, 192; N. Z. 175.

Contributories in case of bankruptcy. 82. If any contributory, or person deemed to be a contributory, becomes bankrupt, either before or after he has been placed on the list of contributories, his assignee or trustee shall be deemed to represent such contributory for all the purposes of the winding-up, and shall be deemed to be a contributory accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any moneys due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up. — E. §§ 127, 263 (24), 269; V. a. (No. 1074) 74, 176 (5), 184; T. a. (33 Vic. No. 22) 109, c. (59 Vic. No. 19) 21; S. A. a. (No. 557) 103, 190; Q. e. (27 Vic. No. 4) 76, 190 (5), 194; W. A. a. (56 Vic. No. 8) 105, 192; N. Z. 176.

Contributories in case of marriage. 83. If any female contributory, or female deemed to be a contributory, marries, either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married, and he shall be deemed to be a contributory accordingly. — E. § 128, 263 (24), 269; V. a. (No. 1074) 75, 176 (5), 184; T. a. (33 Vic. No. 22) 110, c. (59 Vic. No. 19) 21; S. A. a. (No. 557) 104, 190; Q. e. (27 Vic. No. 4) 77, 190 (5), 194; W. A. a. (56 Vic. No. 8) 106, 192. The liability of a husband of a female contributory is determined by the law of the domicile of the company. The provisions of this section do not apply to the case of contributories in a foreign company. — *In re Federal Bank of Australia*, 8 B. C. (N. S. W.) 35. A shareholder who continues to be such until the winding-up is a contributory. The time of the marriage of a female contributory is immaterial. — *In re Bulli Coal Mining Co.*, 17 L. R. (N. S. W.) (Eq.) 97; 6 B. C. (N. S. W.) 71; *In re Federal Bank of Australia*, 8 B. C. (N. S. W.) 35. *Cp. Pacific Insurance Co. v. Coghlan*, 10 W. N. (N. S. W.) 118.

Winding-up by the Court.

Under what circumstances companies may be wound up by the Court. 84. Companies may be wound up by the Court under this Part of this Act under the following circumstances (that is to say): In the case of a company formed or registered under this Part of this Act: a) Whenever the company has passed a special resolution requiring the company to be wound up by the Court; b) Whenever the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year; c) Whenever the members are reduced in number to less than seven; d) Whenever the company is unable to pay its debts; e) Whenever the Court is of opinion that it is just and equitable that the company should be wound up. In the case of an unregistered company: f) Whenever the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs; and also under the circumstances set out in subsections d) and e) of this section. — E. § 129, 268; V. a. (No. 1074) 76, 183 (3); T. a. (33 Vic. No. 22) 111, c. (59 Vic. No. 19) 20 (3); S. A. a. (No. 557) 105, 189 (3); Q. e. (27 Vic. No. 4) 78, 193 (3); W. A. a. (56 Vic. No. 8) 107, 191 (3); N. Z. 87 (9), 177. — The Court has a discretion to grant a petition for winding-up. — *In re Greta Collieries*, 4 B. C. (N. S. W.) 87. *Cp. In re North Sydney, etc., Co.*, 14 L. R. (N. S. W.) (Eq.) 367; 3 B. C. (N. S. W.) 81; 4 B. C. (N. S. W.) 37. For cases under (e) see *In re Mason Bros.*, 12 L. R. (N. S. W.) (Eq.) 183; 2 B. C. (N. S. W.) 2; *In re City Avenue Co.*, 2 B. C. (N. S. W.) 41. *In re Great Cobar C. M. Co.*, 2 S. R. (N. S. W.) 94; 19 W. N. (N. S. W.) 164.

Power to refer winding-up to Master. 85. 1. The Court in making an order under this Part of this Act for winding-up a company may direct all subsequent proceedings for winding-up the same to be had and taken before the Master, and the Master shall for such winding-up have all the powers of the Court, subject, however, to appeal to the Court. 2. The Master may refer any matter to the Court which he may think proper to be determined by the Court. — E. §§ 134, 135.

Company when deemed unable to pay its debts. 86. A company shall be deemed to be unable to pay its debts. In the case of a company formed or registered under this part of this Act: a) Whenever a creditor, by assignment or otherwise, to whom the company is indebted (at law or in equity) in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor; b) Whenever execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the company is returned unsatisfied

in whole or in part; c) Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts. In the case of an unregistered company: d) Under the circumstances set out in subsection a) of this section, except that the service required shall be effected by leaving the demand therein mentioned at the principal place of business of the company, or by delivery of the same to the secretary or some director or principal officer of the company, or in such manner as the Court may approve or direct; or e) Under the circumstances set out in subsection b) of this section, except that the execution therein mentioned shall further extend to execution or other process issued on a judgment, decree, or order obtained in any proceeding against any member of the company, as such, or against any person authorised to be sued as nominal defendant on behalf of the company; or f) Under the circumstances set out in subsection c) of this section; or g) Whenever: i) Any action, suit, or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company; and ii) Notice in writing of the institution of such action, suit, or other proceeding has been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct; and iii) The company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against such suit, action, or other proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same. — E. §§ 130, 268; V. a. (No. 1074) 77, 183 (4); T. a. (33 Vic. No. 22) 112, c. (59 Vic. No. 19) 20 (4); S. A. a. (No. 557) 106, 189 (4); Q. e. (27 Vic. No. 4) 79, 193 (4); W. A. a. (56 Vic. No. 8) 108, 191 (4); N. Z. 178. — In determining whether a company is or is not able to pay its debts the character of the debts and the whole circumstances generally must be considered. If it be found that the debts were incurred for works necessary in order to make the business a going concern, greater latitude will be allowed. — In re Redhead Coal Co. 3 B. C. (N. S. W.) 50.

Place of business of unregistered company deemed to be registered office. 87. The principal place of an business of unregistered company shall for all the purposes of the winding-up of such company be deemed to be the registered office of the company. — E. § 268 (1, I); V. a. (No. 1074) 183 (1); T. c. (59 Vic. No. 19) 20 (1); S. A. a. (No. 557) 189 (1); Q. e. (27 Vic. No. 4) 193 (1); W. A. a. (56 Vic. No. 8) 191 (1).

Unregistered company not to be wound up voluntarily. 88. No unregistered company shall be wound up under this Part of this Act, voluntarily, or subject to the supervision of the Court. — E. § 268 (1, II); V. a. (No. 1074) 183 (2); T. c. (59 Vic. No. 19) 20 (2); S. A. a. (No. 557) 189 (2); Q. e. (27 Vic. No. 4) 193 (2); W. A. a. (56 Vic. No. 8) 191 (2).

Application for winding-up to be made by petition. 89. 1. Any application to the Court under this Part of this Act for the winding-up of a company shall be by petition, and such petition may be presented: a) By the company; or b) By any creditor or contributory of the company; or c) By all or any of the above parties together or separately. **2.** Every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory. — E. § 137; V. a. (No. 1074) 78; T. a. (33 Vic. No. 22) 114; S. A. a. (No. 557) 107; Q. e. (27 Vic. No. 4) 81; W. A. a. (56 Vic. No. 8) 109; N. Z. 179. — As to persons by whom petitions for winding-up may be presented, see In re Acetylene Gas Co., 1 S. R. (N. S. W.) (Eq.) 102; 18 W. N. (N. S. W.) 161 (debt payable at a future time); In re North Sydney, etc., Co., 14 L. R. (N. S. W.) 367; 4 B. C. (N. S. W.) 37 (secured debt); In re Lucky Hit S. M. Co., 1 B. C. (N. S. W.) 8 (fully paid-up shareholder); In re National, etc., Co., 6 B. C. (N. S. W.) 14 (fully paid-up shareholder).

Contributory when not qualified to prevent winding-up by petition. 90. 1. No contributory of a company under this Part of this Act shall be capable of presenting a petition for winding-up such company, unless: a) The members of such company are reduced in numbers to less than seven; or b) The shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him and registered in his name for a period of at least six months during the eighteen months previously to the commencement of the winding-up, or have devolved upon him through the death of a former owner. **2.** Where a share has during the whole or any part of the six months been held by or registered in the name of: a) The wife of a contributory either before or after her marriage; or

b) Any trustee for such wife or for the contributory, such share shall for the purposes of this section be deemed to have been held by, and registered in the name of, the contributory. — E. § 137; T. a. (33 Vic. No. 22) 115; S. A. a. (No. 557) 107; Q. f. (53 Vic. No. 18) 43; W. A. a. (56 Vic. No. 8) 109; N. Z. 180.

Commencement of winding-up by the Court. 91. A winding-up by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up. — E. § 139; V. a. (No. 1074) 79; T. a. (33 Vic. No. 22) 117; S. A. a. (No. 557) 109; Q. e. (27 Vic. No. 4) 83; W. A. a. (56 Vic. No. 8) 111; N. Z. 181.

Court may grant injunction. 92. 1. The Court may at any time after the presentation of a petition for winding-up and before making an order for winding-up: a) In the case of a company formed under the provisions of this Part of this Act, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company; b) In the case of a company registered under the provisions of Division six of this Part of this Act, or unregistered, upon the application of any creditor of the company, restrain further proceedings in any action, suit, or proceeding against any contributory of the company, as well as against the company as hereinbefore provided, upon such terms as the Court thinks fit. 2. The Court may also at any time after the presentation of such petition and before the first appointment of liquidators appoint provisionally an official liquidator of the estate and effects of the company. — E. §§ 140, 265, 270; V. a. (No. 1074) 80, 177, 185; T. a. (33 Vic. No. 22) 228, 229, c. (59 Vic. No. 19) 22; S. A. a. (No. 557) 110, 191; Q. e. (27 Vic. No. 4) 84, 191, 195; W. A. a. (56 Vic. No. 8) 112, 193; N. Z. 182, 243, 289.

Course to be pursued by Court on hearing petition. 93. Upon hearing the petition the Court may dismiss the same with or without costs, or may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just. — E. § 141; V. a. (No. 1074) 81; T. a. (33 Vic. No. 22) 119; S. A. a. (No. 557) 111, Q. e. (27 Vic. No. 4) 85; W. A. a. (56 Vic. No. 8) 113; N. Z. 183.

Actions to be stayed after order for winding-up. 94. When an order has been made under this Part of this Act for winding-up a company no suit, action, or other proceeding shall, except with the leave of the Court and subject to such terms as the Court may impose, be proceeded with or commenced against such company, or, if the company is registered under the provisions of Division six of this Part of this Act, or unregistered, against any contributory of such company, in respect of any debt of such company. — E. §§ 87, 266, 271; V. a. (No. 1074) 82, 178, 186; T. a. (33 Vic. No. 22) 120, 229, c. (59 Vic. No. 19) 22; S. A. a. (No. 557) 112, 189, 192; Q. e. (27 Vic. No. 4) 86, 192, 196; W. A. a. (56 Vic. No. 8) 114, 191, 194; N. Z. 244, 290. — *Cp. Wood v. Mason Bros.*, 2 B. C. (N. S. W.) 28; *Thomson v. Mulgoa Irrigation Co.*, 4 B. C. (N. S. W.) 33. But the Crown is not bound by this provision. — *In re Centennial, etc. Co.*, 3 B. C. (N. S. W.) 27. As to leave to distrain, see *In re Commercial Agency Co.*, 3 B. C. (N. S. W.) 36.

Certain attachments, sequestrations, and executions to be void. 95. Where any company is being wound up by the Court, or under the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of such company after the commencement of the winding-up shall be void to all intents. — E. § 211; V. a. (No. 1074) 150; T. a. (33 Vic. No. 22) 198; S. A. a. (No. 557) 177; Q. e. (27 Vic. No. 4) 164; W. A. a. (56 Vic. No. 8) 179; N. Z. 244. *Cp. St. George Industrial Society*, 16 W. N. (N. S. W.) 259.

Copy of order to be forwarded to the Registrar. 96. When an order has been made under this Part of this Act for winding-up a company, a copy of such order shall forthwith be forwarded by the company to the Registrar, who shall make a minute thereof in his books relating to the company. — E. § 143; V. a. (No. 1074) 83; T. a. (33 Vic. No. 22) 121; S. A. a. (No. 557) 113; Q. e. (27 Vic. No. 4) 87; W. A. a. (56 Vic. No. 8) 115; N. Z. 183 (2).

Power of Court to stay proceedings. 97. The Court may at any time after an order has been made for winding-up a company, upon the application of any creditor or contributory of such company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same either altogether or for a limited time, on such terms and subject to such conditions as it deems fit. — E. § 144; V. a. (No. 1074) 84; T. a. (33 Vic. No. 22) 122; S. A. a. (No. 557) 149; Q. e. (27 Vic. No. 4) 88; W. A. a. (56 Vic. No. 8) 116; N. Z. 184.

Provisions to apply to unregistered companies, etc. 98. 1. The general provisions of this Part of this Act with respect to winding-up companies shall apply to

unregistered companies and to companies registered under Division six of this Part of this Act, but subject to the special provisions of this Act with regard to such companies respectively. 2. The special provisions in this Act relating to unregistered companies and to companies registered under Division six of this Part of this Act shall be deemed to be made in addition to and not in restriction of such general provisions; and the Court or official liquidator may, in addition to any special thing contained in this Part of this Act, exercise any powers or do any act in the case of such companies which may be exercised or done by it or him in winding-up companies formed under this Act. 3. An unregistered company shall not, except with respect to a winding-up, be deemed to be a company under this Part of this Act, and then only to the extent herein provided. — E. §§ 263, 268, 273; V. a. (No. 1074) 176, 183, 188; T. c. (59 Vic. No. 19) 20, 25; S. A. a. (No. 557) 189, 194; Q. e. (27 Vic. No. 4) 190, 193, 198; W. A. a. (56 Vic. No. 8) 191, 196, N. Z. 5 (3).

Effect of winding-up order on share capital of company limited by guarantee.

99. When an order has been made for winding-up a company, limited by guarantee, and having a capital divided into shares, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt of the nature of a specialty due to the company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court. — E. § 123 (3); V. a. (No. 1074) 85; T. a. (33 Vic. No. 22) 123; S. A. a. (No. 557) 162; Q. e. (27 Vic. No. 4) 89; W. A. a. (56 Vic. No. 8) 164; N. Z. 245.

Court may have regard to wishes of creditors or contributories. 100. 1. The Court may, as to all matters relating to the winding-up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may if it thinks it expedient direct meetings of the creditors or contributories to be summoned, held, and conducted, in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. 2. In the case of creditors regard is to¹⁾ be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company. — E. § 145; V. a. (No. 1074) 86; T. a. (33 Vic. No. 22) 124; S. A. a. (No. 557) 153; Q. e. (27 Vic. No. 4) 90; W. A. a. (56 Vic. No. 8) 156; N. Z. 185.

Official liquidators.

Appointment of official liquidator. 101. 1. For the purpose of conducting the proceedings in winding-up and assisting the Court therein there may be appointed by the Court by which the order for winding-up is made persons to be called official liquidators, and the Court may appoint such persons either provisionally or otherwise as it thinks fit to the office of official liquidators. 2. In all cases if more persons than one are appointed to the office of official liquidator the Court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons. 3. The Court may also determine whether any and what security is to be given by any official liquidator on his appointment. 4. If no official liquidator is appointed or during any vacancy in such appointment all the property of the company being wound up shall be deemed to be in the custody of the Court. — E. § 149; V. a. (No. 1074) 88; T. a. (33 Vic. No. 22) 125; S. A. a. (No. 557) 115 (1—4); Q. e. (27 Vic. No. 4) 91; W. A. a. (56 Vic. No. 8) 118 (1—4); N. Z. 186, 187.

Resignation. Removal. Compensation. 102. 1. Any official liquidator may resign or be removed by the Court on due cause shown, and any vacancy in the office of an official liquidator appointed by the Court shall be filled by the Court. 2. There shall be paid to the official liquidator such salary or remuneration by way of percentage or otherwise as the Court may direct, and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the Court directs. — E. § 149; V. a. (No. 1074) 88; T. a. (33 Vic. No. 22) 126; S. A. a. (No. 557) 115 (5, 6); Q. e. (27 Vic. No. 4) 92; W. A. a. (56 Vic. No. 8) 115 (5, 6); N. Z. 188, 191. — A call ordered to be paid to an official liquidator, since deceased, was ordered to be paid to his successor. — *In re Hayes & Co.*, 6 B. C. (N. S. W.) 91. — A petition for the removal of a liquidator by a contributory in arrears on calls will be proceeded with only on condition of the contributory discharging such arrears. — *In re Webb's S. M. Co.*, 6 B. C. (N. S. W.) 47. Practice in case of resignation, see *In re N. S. W. Investment Co.*, 3 B. C. (N. S. W.) 30.

¹⁾ *Sic*; obviously "to".

Where there were several liquidators and one has resigned the court may refuse to appoint a new liquidator, and may allow the remaining liquidators to carry on the winding-up. — *In re Australian Banking Co.*, 3 B. C. (N. S. W.) 11.

Style and duties of official liquidator. 103. 1. The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed and not by his individual name. 2. The official liquidator shall take into his custody or under his control all the property, effects, and choses in action to which such company is or appears to be entitled, and shall perform such duties in reference to the winding-up as may be imposed by the Court. — E. § 149; V. a. (No. 1074) 89; T. a. (33 Vic. No. 22) 127; S. A. a. (No. 557) 116; Q. e. (27 Vic. No. 4) 93; W. A. a. (56 Vic. No. 8) 119; N. Z. 192.

Powers of official liquidator. 104. The official liquidator shall have power with the sanction of the Court to: a) Bring or defend any action, suit, or prosecution, or other legal proceeding in the name and on behalf of the company; b) Carry on the business of the company so far as may be necessary for the beneficial¹⁾ winding-up of the same; c) Sell the real and personal property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels; d) Do all acts and execute in the name and on behalf of the company all deeds, receipts, agreements of reference or submissions to arbitration and other documents, and for that purpose to use when necessary the company's seal; e) Prove, rank, claim, and draw a dividend in the matter of the bankruptcy or insolvency of any contributory for any balance against the estate of such contributory, and take and receive dividends in respect of such balance in the matter of bankruptcy or insolvency as a separate debt due from such bankrupt or insolvent and rateably with the other separate creditors; f) Draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, and raise upon the security of the assets of the company any requisite sums of money; and the drawing, accepting, making, or indorsing of every such bill of exchange or promissory note as aforesaid on behalf of such company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or indorsed by or on behalf of such company in the course of carrying on the business thereof; g) Take out if necessary in his official name, letters of administration to any deceased contributory, and do in his official name such other acts as may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall for the purpose of enabling him to take out such letters or recover such moneys be deemed to be due to the official liquidator himself; h) Do and execute all such other things as may be necessary for winding-up the affairs of the company and distributing its assets. — E. § 151; V. a. (No. 1074) 90; T. a. (33 Vic. No. 22) 128; S. A. a. (No. 557) 117; Q. e. (27 Vic. No. 4) 94; W. A. a. (56 Vic. No. 8) 120; N. Z. 195. — An official liquidator may be authorized to sue for calls though a summons had been made. — *In re Grand United G. M. Co.*, 3 B. C. (N. S. W.) 80. As to power to lease, see *In re Federal Bank of Australia*, 6 B. C. (N. S. W.) 3. As to (b), see *In re Patrick Plains Newspaper Co.*, 3 B. C. (N. S. W.) 49.

Discretion of official liquidator. 105. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and where an official liquidator is provisionally appointed may limit and restrict his powers by the order appointing him. — E. § 151 (4, 5); V. a. (No. 1074) 91; T. a. (33 Vic. No. 22) 129; S. A. a. (No. 557) 118; Q. e. (27 Vic. No. 4) 95; W. A. a. (56 Vic. No. 8) 121; N. Z. 196.

Solicitor to official liquidator. 106. The official liquidator may with the sanction of the Court appoint a solicitor to assist him in the performance of his duties. — E. § 151 (1c, d); T. a. (33 Vic. No. 22) 130; S. A. a. (No. 557) Sched. 7 (11); Q. e. (27 Vic. No. 4) 96; W. A. a. (56 Vic. No. 8) Sched. 7 (11); N. Z. 190.

Ordinary powers of Court.

Order for collection of assets. 107. As soon as may be after making an order for winding-up a company the Court shall: a) Settle a list of contributories with power to rectify the register of members in all cases where such rectification is

¹⁾ *Sic.*

required in pursuance of this Part of this Act; and b) cause the assets of the company to be collected and applied in discharge of its liabilities. — E. § 163 (1); V. a. (No. 1074) 93; T. a. (33 Vic. No. 22) 131; S. A. a. (No. 557) 119; Q. e. (27 Vic. No. 4) 97; W. A. a. (56 Vic. No. 8) 122; N. Z. 197. — See notes to § 127, *infra*.

Provision as to representative contributories. 108. 1. In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable for the debts of others. 2. It shall not be necessary where the personal representative of any deceased contributory is placed on the list to add the heirs or devisees of such contributory, nevertheless such heirs or devisees may be added as and when the Court thinks fit. — E. § 163 (2); V. a. (No. 1074) 94; T. a. (33 Vic. No. 22) 132; S. A. a. (No. 557) 120; Q. e. (27 Vic. No. 4) 98; W. A. a. (56 Vic. No. 8) 123; N. Z. 198.

Power of Court to require delivery of property. 109. The Court may, at any time after making an order for winding-up a company, require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker, or agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled. — E. § 164; V. a. (No. 1074) 95; T. a. (33 Vic. No. 22) 133; S. A. a. (No. 557) 121; Q. e. (27 Vic. No. 4) 99; W. A. a. (56 Vic. No. 8) 124; N. Z. 199 (a).

Power of Court to order payment of debts by contributory. 110. 1. The Court may at any time after making an order for winding-up a company make an order on any contributory for the time being settled on the list of contributories directing payment to be made in manner in the said order mentioned of any moneys due from him or from the estate of the person whom he represents to the company, exclusive of any moneys which he or such estate may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this Division of this Part of this Act. 2. In making such order when a company is not limited, the Court may allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit. 3. When all the creditors of a company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent calls. — E. § 165; V. a. (No. 1074) 96; T. a. (33 Vic. No. 22) 134; S. A. a. (No. 557) 122; Q. e. (27 Vic. No. 4) 100; W. A. a. (56 Vic. No. 8) 125; N. Z. 199 (b).

Power of Court to make calls. 111. 1. The Court may at any time after making an order for winding-up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make call son, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories to the extent of their liability for payment of all or any sums it deems necessary: a) To satisfy the debts and liabilities of the company; b) To satisfy the costs, charges, and expenses of winding-up; and c) For the adjustment of the rights of the contributories amongst themselves. 2. The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same. — E. § 166; V. a. (No. 1074) 97; T. a. (33 Vic. No. 22) 135; S. A. a. (No. 557) 123; Q. e. (27 Vic. No. 4) 101; W. A. a. (56 Vic. No. 8) 126; N. Z. 199 (c).

Power of Court to order payment into bank. 112. The Court may order any contributory, purchaser, or other person from whom money is due to the company being wound up to pay the same into a bank, to be named by the Court, to the account of the official liquidator instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator. — E. § 167; V. a. (No. 1074) 98; T. a. (33 Vic. No. 22) 136; S. A. a. (No. 557) 124; Q. e. (27 Vic. No. 4) 102; W. A. a. (56 Vic. No. 8) 127; N. Z. 200.

Regulation of account with Court. 113. All moneys, bills, notes, and other securities so paid and delivered into such bank shall be subject to such order and regulation for the keeping of the account of such moneys and other effects, and for the payment and delivery in or investment and payment and delivery out of the same as the Court may direct. — E. § 167; V. a. (No. 1074) 99; T. a. (33 Vic.

No. 22) 137; S. A. a. (No. 557) 125; Q. e. (27 Vic. No. 4) 103; W. A. a. (56 Vic. No. 8) 128; N. Z. 201.

Provision in case of representative contributory not making payment ordered. 114. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the personal and real estates of such deceased contributory or either of such estates, and of compelling payment thereof of the moneys due. — V. a. (No. 1074) 100; T. a. (33 Vic. No. 22) 138; S. A. a. (No. 557) 161; Q. e. (27 Vic. No. 4) 104; W. A. a. (56 Vic. No. 8) 163; N. Z. 202.

Order conclusive evidence. 115. Any order made by the Court in pursuance of this Part of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys (if any) thereby appearing to be due or ordered to be paid are due, and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever. — E. § 168; V. a. (No. 1074) 101; T. a. (33 Vic. No. 22) 139; S. A. a. (No. 557) 126; Q. e. (27 Vic. No. 4) 105; W. A. a. (56 Vic. No. 8) 129; N. Z. 203.

Court may exclude creditors not proving within certain time. 116. The Court may fix a certain day or certain days on or within which creditors of the company being wound up are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved. — E. § 169; V. a. (No. 1074) 102; T. a. (33 Vic. No. 22) 140; S. A. a. (No. 557) 127; Q. e. (27 Vic. No. 4) 106; W. A. a. (56 Vic. No. 8) 130; N. Z. 204.

Court to adjust rights of contributories. 117. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto. — E. § 170; V. a. (No. 1074) 103; T. a. (33 Vic. No. 22) 141; S. A. a. (No. 557) 128; Q. e. (27 Vic. No. 4) 107; W. A. a. (56 Vic. No. 8) 131; N. Z. 205.

Court to order costs. 118. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company being wound up of the costs, charges, and expenses incurred in winding-up in such order or¹⁾ priority as the Court thinks just. — E. § 171; V. a. (No. 1074) 104; T. a. (33 Vic. No. 22) 142; S. A. a. (No. 557) 160; Q. e. (27 Vic. No. 4) 108; W. A. a. (56 Vic. No. 8) 163; N. Z. 206.

Dissolution of company. 119. When the affairs of a company have been completely wound up, the Court shall make an order that such company be dissolved from the date of such order, and such company shall be dissolved accordingly. — E. § 172; V. a. (No. 1074) 105; T. a. (33 Vic. No. 22) 143; S. A. a. (No. 557) 130; Q. e. (27 Vic. No. 4) 109; W. A. a. (56 Vic. No. 8) 133; N. Z. 207.

Registrar to make minute of dissolution. 120. Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company. — E. § 172; V. a. (No. 1074) 106; T. a. (33 Vic. No. 22) 144; S. A. a. (No. 557) 131; Q. e. (27 Vic. No. 4) 110; W. A. a. (56 Vic. No. 8) 134; N. Z. 208 (1).

Penalty on not reporting dissolution. 121. If the official liquidator makes default in reporting to the Registrar, in the case of a winding-up by the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default. — E. § 172; V. a. (No. 1074) 107; T. a. (33 Vic. No. 22) 145; S. A. a. (No. 557) 132; Q. e. (27 Vic. No. 4) 111; W. A. a. (56 Vic. No. 8) 135; N. Z. 208 (2).

Petition to be *lis pendens*. 122. Any petition for winding-up by the Court under this Part of this Act shall constitute a *lis pendens*. — V. a. (No. 1074) 108; T. a. (33 Vic. No. 22) 146; S. A. a. (No. 557) 133; W. A. a. (56 Vic. No. 8) 136; N. Z. 209.

Extraordinary powers of Court.

Powers of Court to summon persons suspected of having property of the company. 123. 1. The Court may, after it has made an order for winding-up a company, summon before it: a) Any officer of the company; or b) Any person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company; or c) Any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company; and may require any such officer or person to produce

¹⁾ *Sic*; the English Act reads "of".

any books, papers, deeds, writings, or other documents in his custody or power relating to the company. 2. If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting and allowed by it) the Court may cause such person to be apprehended and brought before the Court for examination. 3. In cases where any person claims any lien on papers, deeds, writings, or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien. — E. § 174; V. a. (No. 1074) 109; T. a. (33 Vic. No. 22) 147; S. A. a. (No. 557) 156 (1—3); Q. e. (27 Vic. No. 4) 112; W. A. a. (56 Vic. No. 8) 159 (1—3); N. Z. 210. — An application under this section by an official liquidator may be made *ex parte*, and without affidavit. — In re Omeo, etc., Co., 1 B. C. (N. S. W.) 32. An examination under this section is not litigation within section 77 of the *Bankruptcy Act, 1899*. — In re Shadler, 5 S. R. (N. S. W.) 33; 21 W. N. (N. S. W.) 217.

Examination before the Court. 124. The Court may examine upon oath, either orally or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same. — E. § 174; V. a. (No. 1074) 110; T. a. (33 Vic. No. 22) 148; S. A. a. (No. 557) 156 (4); Q. e. (27 Vic. No. 4) 113; W. A. a. (56 Vic. No. 8) 159 (4); N. Z. 211.

Power to arrest absconding contributory. 125. The Court may at any time before or after it has made an order for winding-up a company, upon proof being given that there is probable cause for believing that any contributory is about to quit New South Wales or otherwise abscond, or to remove or conceal any of his goods or chattels for the purpose of evading payment of calls or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order. — E. § 176; V. a. (No. 1074) 111; T. a. (33 Vic. No. 22) 149; S. A. a. (No. 557) 157; Q. e. (27 Vic. No. 4) 114; W. A. a. (56 Vic. No. 8) 160; N. Z. 212.

Powers of Court cumulative. 126. Any powers by this Part of this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other powers subsisting either at law or in equity of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory or debtor or his estate, and such proceedings may be instituted accordingly. — E. § 177; V. a. (No. 1074) 112; T. a. (33 Vic. No. 22) 150; S. A. a. (No. 557) 158; Q. e. (27 Vic. No. 4) 115; W. A. a. (56 Vic. No. 8) 161; N. Z. 213.

Enforcement of and appeal from orders.

Power to enforce. 127. All orders made by the Court under this Part of this Act may be enforced in the same manner in which orders of the Court made in any suit pending therein may be enforced. — E. § 178; V. a. (No. 1074) 158; T. a. (33 Vic. No. 22) 151; S. A. a. (No. 557) 186; Q. e. (27 Vic. No. 4) 116; W. A. a. (56 Vic. No. 8) 188; N. Z. 214. — A contributory settled on the list can not resist a summons for a call, but may have the same suspended in order to enable him to take steps to have his name removed from the register, if he can show good reason for his not having appealed from the decision settling him on the list, and that he was not guilty of laches. — In re Tate Bros. Agency, 2 B. C. (N. S. W.) 80. Cp. In re Mount Costigan Lead, etc., Co., 7 B. C. (N. S. W.) 6. A contributory can not appeal from a judgment whereby the name of another contributory is removed from the list. — In re Phillip Stephan Co., 1 B. C. (N. S. W.) 69. Nor from the refusal of the Master to place another shareholder on the list as a holder of fully paid-up shares. — In re Tom's Lewis Ponds S. M. Co., 3 B. C. (N. S. W.) 87. As to consolidation of cases on appeal to Privy Council, see In re North Sydney, etc., Co., 6 B. C. (N. S. W.) 38. Leave to appeal refused, In re Australian Banking Co., 3 B. C. (N. S. W.) 12.

Appeals from orders. 128. Any order or decision made or given in the matter of a winding-up by the Court may be reheard or appealed from within the same time, and in the same manner, and subject to the same conditions in and subject to which appeals may be had from any order or decision of the Chief Judge or Judge in Equity in cases within their ordinary jurisdiction. — E. § 181; T. a. (33 Vic. No. 22) 152; S. A. a. (No. 557) 247, 248; Q. e. (27 Vic. No. 4) 117; W. A. a. (56 Vic. No. 8) 247, 248; N. Z. 215.

Affidavits, etc., may be sworn before certain persons. 129. 1. Any affidavit, affirmation, or declaration required to be sworn or made under the provisions or

for the purposes of this Division of this Part of this Act may be lawfully sworn or made in any of Her Majesty's dominions, before any Court, Judge, or person lawfully authorised to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions. 2. All Courts, Judges, Justices, commissioners, and persons acting judicially shall take judicial notice of the seal, or stamp, or signature (as the case may be) of any such Court, Judge, person, Consul, or Vice-Consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this Division of this Part of this Act. — E. § 228; T. a. (33 Vic. No. 22) 153—155; Q. e. (27 Vic. No. 4) 118; N. Z. 216.

Voluntary winding-up of company.

Circumstances under which company may be wound-up voluntarily. 130. 1. A company formed or registered under this Part of this Act may be wound up voluntarily whenever: a) The period (if any) fixed for the duration of the company by the articles of association expires, or the event (if any) occurs upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; b) The company has passed a special resolution requiring the company to be wound up voluntarily; c) The company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same. 2. For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution. — E. § 182; V. a. (No. 1074) 114, 115; T. a. (33 Vic. No. 22) 156; S. A. a. (No. 557) 134; Q. e. (27 Vic. No. 4) 119; W. A. a. (56 Vic. No. 8) 137; N. Z. 220.

Commencement of voluntary winding-up. 131. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising such winding-up. — E. § 183; V. a. (No. 1074) 116; T. a. (33 Vic. No. 22) 157; S. A. a. (No. 557) 135; Q. e. (27 Vic. No. 4) 120; W. A. a. (56 Vic. No. 8) 138; N. Z. 221.

Effect of voluntary winding-up. 132. 1. Whenever a company is wound up voluntarily the company shall, from the date of the commencement of such winding-up, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof. 2. All transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company, taking place after the commencement of such winding-up, shall be void. 3. The corporate state and all the corporate powers of such company shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up. — E. § 184; V. a. (No. 1074) 117; T. a. (33 Vic. No. 22) 158; S. A. a. (No. 557) 150; Q. e. (27 Vic. No. 4) 121; W. A. a. (56 Vic. No. 8) 139; N. Z. 222.

Notice of resolution to wind up voluntarily. 133. Notice of any special resolution or extraordinary resolution passed for winding up a company voluntarily shall be given by advertisement in the *Gazette*. — E. § 185; V. a. (No. 1074) 118; T. a. (33 Vic. No. 22) 159; S. A. a. (No. 557) 136; Q. e. (27 Vic. No. 4) 122; W. A. a. (56 Vic. No. 8) 140; N. Z. 223.

Consequences of voluntary winding-up. 134. The following consequences shall ensue upon the voluntary winding-up of a company: a) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and subject thereto shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members according to their rights and interests in the company; b) Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property; c) The company in general meeting shall appoint such persons as it thinks fit to be liquidators, and may fix the remuneration to be paid to them; d) If one person only is appointed all the provisions herein contained in reference to several liquidators shall apply to him; e) Upon the appointment of liquidators all the powers of the directors shall cease except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers; f) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination by any number not less than two; g) The liquidators may, without the sanction of the Court, exercise all powers by this Part of this Act given to the official liquidator; h) The

liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories; i) The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves, and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same; j) The liquidators shall pay the debts of the company and adjust the rights of the contributories amongst themselves. — E. § 186; V. a. (No. 1074) 119; T. a. (33 Vic. No. 22) 160; S. A. a. (No. 557) 137, 152; Q. e. (27 Vic. No. 4) 123, h. (56 Vic. No. 24) 21; W. A. a. (56 Vic. No. 8) 141, 155; N. Z. 224, 249.

Effect of voluntary winding-up on share capital of company limited by guarantee.

135. Where a company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company to the extent of any sums that may be unpaid on any shares held by him and payable at such time as may be appointed by the liquidators. — V. a. (No. 1074) 120; T. a. (33 Vic. No. 22) 161; S. A. a. (No. 557) 162; Q. e. (27 Vic. No. 4) 124; N. Z. 245.

Power of company to delegate appointment of liquidators. 136. 1. A company about to be or in the course of being wound up voluntarily may by an extraordinary resolution: a) Delegate to its creditors or to any committee of its creditors the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators; or b) Enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised. 2. Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the company. — E. § 190; V. a. (No. 1074) 121; T. a. (33 Vic. No. 22) 162; S. A. a. (No. 557) 138; Q. e. (27 Vic. No. 4) 125; W. A. a. (56 Vic. No. 8) 142; N. Z. 225.

Power for liquidators or contributories in voluntary winding-up to apply to Court.

137. 1. Where a company is being wound up voluntarily the liquidators or any contributory of the company may apply to the Court: a) To determine any question arising in the matter of such winding-up; or b) To exercise as respects the enforcing of calls, or in respect of any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court. 2. The Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede wholly or partially to such application on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just. — E. § 193; V. a. (No. 1074) 124; T. a. (33 Vic. No. 22) 165; S. A. a. (No. 557) 154; Q. e. (27 Vic. No. 4) 128; W. A. a. (56 Vic. No. 8) 157; N. Z. 226. — The petition by the liquidator may properly be addressed to the Judge in Equity. — *In re Farmers' Co-operative Co.*, 16 W. N. (N. S. W.) 257. Practice in appeal to Privy Council, see *In re Anglo-Australian Investment Co.*, 14 L. R. (N. S. W.) (Eq.) 110; 3 B. C. (N. S. W.) 108.

Power of liquidator to call general meetings. 138. 1. Where a company is being wound up voluntarily the liquidators may, during the continuance of such winding-up, summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution or for any other purposes they think fit. 2. In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the company at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings and the manner in which the winding-up has been conducted during the preceding year. — E. § 194; V. a. (No. 1074) 125; T. a. (33 Vic. No. 22) 166; S. A. a. (No. 557) 141; Q. e. (27 Vic. No. 4) 129; W. A. a. (56 Vic. No. 8) 145; N. Z. 227, 252. — A compulsory winding-up not ordered where liquidators failed to call a meeting within a year, but gave satisfactory reasons. — *In re Australian, etc., Ins. Co.*, 2 B. C. (N. S. W.) 70.

Power to fill up vacancy in liquidators. 139. 1. If any vacancy occurs in the office of liquidators appointed by the company by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy. 2. A general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators (if any) or by any contributory of the company, and shall be deemed to have been duly held, if held in manner prescribed by the regulations of the company or in such other manner as may on application by the continuing liquidators (if any) or by any contributory of the company be determined by the Court. — E. § 189; V. a. (No. 1074) 126; T. a. (33 Vic. No. 22) 167; S. A. a. (No. 557) 142; Q. e. (27 Vic. No. 4) 130; W. A. a. (56 Vic. No. 8) 146; N. Z. 228.

Power of Court to appoint liquidators. 140. 1. If from any cause whatever there is no liquidator acting in the case of a voluntary winding-up, the Court may on the application of a contributory appoint a liquidator. 2. The Court may also on due cause shown remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding-up. — E. § 186; V. a. (No. 1074) 127; T. a. (33 Vic. No. 22) 168; S. A. a. (No. 557) 143; Q. e. (27 Vic. No. 4) 131; W. A. a. (56 Vic. No. 8) 147; N. Z. 229.

Liquidators on conclusion of winding-up to make up an account. 141. 1. As soon as the affairs of the company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the company disposed of, and thereupon they shall call a general meeting of the company for the purpose of having the account laid before them and hearing any explanation that may be given by the liquidators. 2. The meeting shall be called by advertisement specifying the time, place, and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the *Gazette*, and in one or more newspapers circulating in the district in which the registered office of the company is situated. — E. § 195; V. a. (No. 1074) 128; T. a. (33 Vic. No. 22) 169; S. A. a. (No. 557) 144; Q. e. (27 Vic. No. 4) 132; W. A. a. (56 Vic. No. 8) 148; N. Z. 230.

Liquidators to report meeting to the registrar. 142. [As amended by c. (No. 22 of 1906) § 15, *infra*.] 1. The liquidators shall make a return to the Registrar: a) Of such meeting having been held; and b) Of the date at which the same was held. 2. On the expiration of three months from the date of the registration of such return the company shall be deemed to be dissolved. 3. If the liquidators make default in making such return to the Registrar they shall incur a penalty not exceeding five pounds for every day during which such default continues. 4. In the event of no quorum being present at any such meeting, it shall be a sufficient compliance with this section for the liquidators to make a return that such meeting has been duly convened. — E. § 195; V. a. (No. 1074) 129; T. a. (33 Vic. No. 22) 170; S. A. a. (No. 557) 145; Q. e. (27 Vic. No. 4) 133; W. A. a. (56 Vic. No. 8) 149; N. Z. 231. — In the absence of fraud a dissolved company will not be revived. — *Selfe v. Colonial Ice Co.*, 10 W. N. (N. S. W.) 153. Vesting order made. — *In re Clarke, etc.*, Trusts 5 S. R. (N.S.W.) 498; 22 W. N. (N. S. W.) 165.

Costs of voluntary liquidation. 143. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims. — E. § 196; V. a. (No. 1074) 130; T. a. (33 Vic. No. 22) 171; S. A. a. (No. 557) 160; Q. e. (27 Vic. No. 4) 134; W. A. a. (56 Vic. No. 8) 163; N. Z. 232.

Saving rights of creditors. 144. The voluntary winding-up of a company shall not be a bar to the right of any creditor to have the same wound up by the Court if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up. — E. § 197; V. a. (No. 1074) 131; T. a. (33 Vic. No. 22) 172; S. A. a. (No. 557) 146; Q. e. (27 Vic. No. 4) 135; W. A. a. (56 Vic. No. 8) 150; N. Z. 233. — Otherwise the voluntary winding-up is a bar to a compulsory winding-up. — *In re Australian etc., Ins. Co.*, 2 B. C. (N. S. W.) 70. See *In re Root Hog G. M. Co.*, 1 B. C. (N. S. W.) 32.

Power of Court to adopt proceedings of voluntary winding-up. 145. Where a company is in course of being wound-up voluntarily and proceedings are taken for the purpose of having the same wound-up by the Court, the Court may, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up. — E. § 198; V. a. (No. 1074) 132; T. a. (33 Vic. No. 22) 173; S. A. a. (No. 557) 147; Q. e. (27 Vic. No. 4) 136; W. A. a. (56 Vic. No. 8) 151; N. Z. 234.

*Winding-up subject to the supervision of the Court.***Power of Court on application to direct winding-up, subject to supervision.**

146. When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but: a) Subject to such supervision of the Court; and b) With such liberty for creditors, contributories, or others to apply to the Court; and generally c) Upon such terms and subject to such conditions as the Court thinks just. — E. § 199; V. a. (No. 1074) 133; T. a. (33 Vic. No. 22) 174; Q. e. (27 Vic. No. 4) 137; N. Z. 235 (1). — For cases where a winding-up subject to the supervision of the Court was ordered, see *In re Acetylene Gas Co.*, 1 S. R. (N. S. W.) (Eq.) 102; 18 W. N. (N. S. W.) 161; *In re Picturesque Atlas Co.*, 4 B. C. (N. S. W.) 63.

Petition for winding-up subject to supervision. 147. A petition praying wholly or in part that a voluntary winding-up should continue, but subject to the supervision of the Court (and which winding-up is hereinafter referred to as a winding-up under the supervision of the Court), shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding-up the company by the Court. — E. § 200; V. a. (No. 1074) 134; T. a. (33 Vic. No. 22) 175; Q. e. (27 Vic. No. 4) 138; N. Z. 235 (2).

Court may have regard to wishes of creditors. 148. 1. The Court may: a) In determining whether a company is to be wound up altogether by the Court or under the supervision of the Court; b) In the appointment of liquidators; and c) In all other matters relating to the winding-up under supervision, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence. 2. The Court may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court. 3. In the case of creditors, regard shall be had to the value of the debts due to each creditor, and in the case of contributories, to the number of votes conferred on each contributory by the regulations of the company. — E. § 201; V. a. (No. 1074) 135; T. a. (33 Vic. No. 22) 176; S. A. a. (No. 557) 153 (1), 4; Q. e. (27 Vic. No. 4) 139; W. A. a. (56 Vic. No. 8) 152; N. Z. 236.

Court may appoint official liquidators in winding-up, subject to supervision.

149. 1. Where any order is made by the Court for a winding-up under the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidators. 2. Any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position, as if they had been appointed by the company. 3. The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation. — E. § 202; V. a. (No. 1074) 136; T. a. (33 Vic. No. 22) 177; Q. e. (27 Vic. No. 4) 140; N. Z. 237. Cp. *In re Mount Hope C. M. Co.*, 22 W. N. (N. S. W.) 219.

Effect to order of Court for winding-up, subject to supervision. 150. 1. Where an order is made for a winding-up under the supervision of the Court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all their powers without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily. 2. Save as aforesaid, any order made by the Court for a winding-up under the supervision of the Court shall, for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the Court for winding-up the company by the Court, and shall confer full authority on the Court: a) To make calls; or b) To enforce calls made by the liquidators; and c) To exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court. 3. In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidators" shall be deemed to include the liquidators conducting the winding-up subject to the supervision of the Court. — E. § 203; V. a. (No. 1074) 137; T. a. (33 Vic. No. 22) 178; Q. e. (27 Vic. No. 4) 141; N. Z. 238, 239.

Voluntary liquidators may in certain cases be appointed official liquidators.

151. Where an order has been made for the winding-up of a company under the supervision of the Court, and such order is afterwards superseded by an order direct-

ing the company to be wound-up compulsorily, the Court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be official liquidators. — E. § 204; T. a. (33 Vic. No. 22) 179; Q. e. (27 Vic. No. 4) 142; N. Z. 240.

Supplemental provisions.

After commencement of winding-up, dispositions of property of company void. 152. Where a company is being wound up by the Court or under the supervision of the Court, all dispositions of the property, effects, and choses in action of such company, and every transfer of shares or alteration in the status of the members of such company made between the commencement of the winding-up and the order for winding-up shall, unless the Court otherwise orders, be void. — E. § 205; V. a. (No. 1074) 138; T. a. (33 Vic. No. 22) 180; S. A. a. (No. 557) 129; Q. e. (27 Vic. No. 4) 143; W. A. a. (56 Vic. No. 8) 132; N. Z. 242.

Books of company to be primâ facie evidence. 153. Where a company is being wound up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company, be primâ facie evidence of the truth of all matters purporting to be therein recorded. — E. § 220; V. a. (No. 1074) 139; T. a. (33 Vic. No. 22) 181; S. A. a. (No. 557) 163; Q. e. (27 Vic. No. 4) 144; W. A. a. (56 Vic. No. 8) 165; N. Z. 250.

Disposal of books and documents. 154. 1. Where a company has been wound up under this part of this Act, and is about to be dissolved, the books, accounts, and documents of such company and of the liquidators may be disposed of in the following way (that is to say): a) Where such company has been wound up by or under the supervision of the Court in such way as the Court directs; and b) Where such company has been wound up voluntarily in such way as the company by an extraordinary resolution directs. 2. After the lapse of five years from the date of such dissolution no responsibility shall rest on the company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party claiming to be interested therein. — E. § 222; V. f. (No. 1482) 147; T. a. (33 Vic. No. 22) 182; S. A. a. (No. 557) 164; Q. e. (27 Vic. No. 4) 145; W. A. a. (56 Vic. No. 8) 166; N. Z. 252.

Inspection of books. 155. 1. Where an order has been made for a winding-up by or under the supervision of the Court, the Court may make such order for the inspection by creditors and contributories of books and papers as the Court thinks just. 2. Any books and papers in the possession of the company being wound up may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise. — E. § 221 V. a. (No. 1074) 141; T. a. (33 Vic. No. 22) 183; S. A. a. (No. 557) 165; Q. e. (27 Vic. No. 4) 146; W. A. a. (56 Vic. No. 8) 167; N. Z. 253.

Power of assignee of chose in action to sue. 156. Any person to whom any thing in action belonging to a company is assigned in pursuance of this Part of this Act may bring or defend any action or suit relating to such thing in action in his own name. — V. a. (No. 1074) 142; T. a. (33 Vic. No. 22) 184; S. A. a. (No. 557) 166; Q. e. (27 Vic. No. 4) 147; W. A. a. (56 Vic. No. 8) 168; N. Z. 157.

Debts of all descriptions to be proved. 157. In the event of a company being wound up under this Part of this Act all debts payable on a contingency, and all claims against such company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made so far as it is possible of the value of all such debts or claims as may be subject to any contingency, or sound only in damages, or for some other reason do not bear a certain value. — E. § 206; V. a. (No. 1074) 143; T. a. (33 Vic. No. 22) 185; S. A. a. (No. 557) 167, 168; Q. e. (27 Vic. No. 4) 148; W. A. a. (56 Vic. No. 8) 169, 170; N. Z. 248. — Debts due directors may be proved. — *In re Mount Costigan Co.*, 17 L. R. (N. S. W.) (Eq.) 80; 6 B. C. (N. S. W.) 54. See also *In re City Avenue Co.*, 12 L. R. (N. S. W.) (Eq.) 193, 241; *In re Sydney, etc., Co.*, 7 B. C. (N. S. W.) 29.

General scheme of liquidation may be sanctioned. 158. The liquidators may: a) With the sanction of the Court, where a company is being wound up by or under the supervision of the Court; and b) With the sanction of an extraordinary resolution of the company where a company is being wound up altogether voluntarily; pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors,

or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against such company, or whereby such company may be rendered liable. — E. § 214; V. a. (No. 1074) 144; T. a. (33 Vic. No. 22) 186; S. A. a. (No. 557) 171; Q. e. (27 Vic. No. 4) 149; W. A. a. (56 Vic. No. 8) 173; N. Z. 258—260. — While the Court has an absolute discretion it will not lightly disregard the wishes of a majority — In re Australian Banking Co., 4 B. C. (N. S. W.) 34. But not an illegal scheme. — In re Australian, etc., Co., 9 B. C. (N. S. W.) 62. A supplementary arrangement may be sanctioned. — In re Sydney, etc., Association, 3 B. C. (N. S. W.) 23. Where an arrangement has not been carried unanimously the application to the Court should not be *ex parte*. — In re Sydney, etc., Co., 3 B. C. (N. S. W.) 81. There must be a reasonable probability that the company can carry out the arrangement. — In re Australian, etc., Co., 13 L. R. (N. S. W.) (Eq.) 51; 2 B. C. (N. S. W.) 97. See further In re Australian Banking Co., 4 B. C. (N. S. W.) 34; In re Anglo-Australian, etc., Co., 13 L. R. (N. S. W.) (Eq.) 38; 2 B. C. (N. S. W.) 53; In re Australian J. S. Bank, 14 L. R. (N. S. W.) (Eq.) 89; 3 B. C. (N. S. W.) 116.

Arrangements with creditors. 159. 1. Any arrangement entered into between a company about to be or in the course of being wound up voluntarily and its creditors shall be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors. 2. Any creditor or contributory of a company that has entered into any such arrangement with its creditors may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same. — E. § 191; V. a. (No. 1074) 122, 123; T. a. (33 Vic. No. 22) 163, 164; c. (59 Vic. No. 19) 19; S. A. a. (No. 557) 139—140; Q. e. (27 Vic. No. 4) 126, 127, 149; W. A. a. (56 Vic. No. 8) 143—144; N. Z. 260. — Unless all the creditors consent, the arrangement must provide for the distribution of assets *pari passu* among the creditors generally or any particular class of creditors. — In re Farmers' etc., Co., 3 B. C. (N. S. W.) 39.

Creditors meetings with a view to Court's sanction of compromises. 160. 1. Where any compromise or arrangement is proposed between a company in the course of being wound up, either voluntarily, or by, or under the supervision of the Court, and the creditors of the company, or any class of such creditors, the Court may, in addition to any other of its powers, on the application in a summary way of any creditor, or the liquidator, order that a meeting of such creditors, or class of creditors, shall be summoned in such manner as the Courts directs. 2. If a majority in number, representing three-fourths in value of such creditors, or class of creditors, present either in person, or by proxy or attorney, at such meeting, agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by the order of the Court, be binding on all such creditors, or class of creditors, and also on the liquidator and contributories of the company. 3. The Court, on the application of the company, or of any creditor or person interested in the company, before sanctioning any arrangement or compromise under this section, may order such meetings to be summoned and inquiries made as it thinks fit, and may alter or vary such arrangement or compromise, and impose such conditions in the carrying out thereof, as it thinks just. 4. The word "company", in this section, shall include any society registered under the *Friendly Societies Act of 1873*, or any Act amending or consolidating the same, or any company, association, or society entitled or liable to be wound up under this Part of this Act. — E. § 120; V. b. (No. 1269) 3—7; T. c. (59 Vic. No. 19) 18, 19; S. A. a. (No. 557) 172; Q. f. (53 Vic. No. 18) 35; W. A. a. (56 Vic. No. 8) 174; N. Z. 258—260. — Cp. c. (No. 22 of 1906) § 15—17 *infra*, and note to § 158, *supra*. Where the directors sanctioned an arrangement, such being a re-arrangement of the old terms between the company and the creditors, the directors represent the shareholders, and when the interests of the latter are not affected, the court will not order a meeting of the shareholders. — In re Sydney, etc., Association, 2 B. C. (N. S. W.) 82. Debenture-holders who are also shareholders are entitled to vote as creditors. — In re Metropolitan, etc., Association, 8 B. C. (N. S. W.) 11. Chairman of meeting can not refuse to allow a proposition to be put to the meeting on the ground of its illegality. — In re Anglo-Australian, etc., Co., 13 L. R. (N. S. W.) (Eq.) 38; 2 B. C. (N. S. W.) 53. The Court will not direct the consideration of any particular proposal. — In re Haymarket, etc., Co., 2 B. C. (N. S. W.) 62.

Arrangements with debtors. 161. 1. The liquidators may: a) With the sanction of the Court in the case of a winding-up by or under the supervision of the Court; and b) With the sanction of an extraordinary resolution of the company where a company is being wound up altogether voluntarily; compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in

damages subsisting or supposed to subsist between such company and any contributory or alleged contributory or other debtor or person apprehending liability to such company, and all questions in any way relating to or affecting the assets of such company or the winding-up thereof, upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon. 2. The liquidators may take any security for the discharge of such debts or liabilities, and give complete discharges in respect of all or any such calls, debts, or liabilities. — E. § 214; V. a. (No. 1074) 145; T. a. (33 Vic. No. 22) 188; S. A. a. (No. 557) 172; Q. e. (27 Vic. No. 4) 150; W. A. a. (56 Vic. No. 8) 174; N. Z. 258. — The power given to liquidators under (b) may be exercised with the sanction of the court, in lieu of an extraordinary resolution. — *In re British-Australian, etc., Co.*, 13 L. R. (N. S. W.) (Eq.) 42; 2 B. C. (N. S. W.) 71.

Power of Court to assess damages against delinquent officers. 162. Where in the course of a winding-up it appears that any past or present director, manager, liquidator, or any officer of the company being wound up has misapplied or retained in his own hands or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, creditor, or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him: i) To repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the court thinks just; or ii) To contribute such sums of moneys to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just. — E. § 215; V. f. (No. 1482) 135; T. c. (59 Vic. No. 19) 13; S. A. a. (No. 557) 179; Q. e. (27 Vic. No. 4) 166; W. A. a. (56 Vic. No. 8) 181; N. Z. 254.

Penalty on falsification of books. 163. If any director, officer, or contributory of such company destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to such company with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanour, and upon being convicted shall be liable to imprisonment for any term not exceeding two years with or without hard labour. — E. § 216; V. a. (No. 1074) 153; T. a. (33 Vic. No. 22) 201; S. A. a. (No. 557) 180; Q. e. (27 Vic. No. 4) 167; W. A. a. (56 Vic. No. 8) 182; N. Z. 255.

Prosecution of delinquent directors or officers in winding-up. 164. If it appears in the course of a winding-up that any past or present director, manager, officer, or member of the company being wound up has been guilty of any offence in relation to the company for which he is criminally responsible: a) The Court, where such company is being wound up by the Court or under the supervision of the Court, may, on the application of any person interested in such winding-up, or of its own motion, direct the liquidator to institute a prosecution for such offence, and may order the costs and expenses to be paid out of the assets of the company; and b) The liquidator, where such company is being wound up altogether voluntarily, with the previous sanction of the Court may prosecute such offender, and all expenses properly incurred by him in such prosecution shall be payable out of the assets of the company in priority to all other liabilities. — E. § 217; V. a. (No. 1074) 154, 155; T. a. (33 Vic. No. 22) 202, 203; S. A. a. (No. 557) 182; Q. e. (27 Vic. No. 4) 168, 169; W. A. a. (56 Vic. No. 8) 184; N. Z. 256, 257.

Perjury. 165. 1. If any person upon any examination upon oath or affirmation authorised under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding-up under this Part of this Act of any company, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury. 2. This section shall not apply to Part II. of this Act nor to so much of Part III. as affects no-liability companies. — E. § 218; V. a. (No. 1074) 156; T. a. (33 Vic. No. 22) 204; S. A. a. (No. 557) 232; Q. e. (27 Vic. No. 4) 170; W. A. a. (56 Vic. No. 8) 232.

Division 5. Registration office.

Constitution of registration office. 166. The registration of companies shall be conducted as follows, that is to say: a) The Governor may from time to time appoint such registrars, assistant registrars, clerks, and servants as he may think necessary for the registration of companies; b) The Governor may make regulations with respect

to the duties to be performed by any such registrars, assistant registrars, clerks, and servants as aforesaid, and may determine the place or places at which offices for the registration of companies are to be established; c) Every person may inspect the documents kept by the Registrar, and may require a copy or extract of any document or part of a document to be certified by the Registrar, and there shall be paid for such inspection and for such certified copy or extract the respective fees specified in the table marked B in the second Schedule hereto, and such certified copy or extract shall be prima facie evidence of the matters therein contained in all legal proceedings whatever; d) Nothing in this section shall be taken to affect the provisions of the Act fifty-ninth Victoria number twenty-five, or any Act consolidating or amending the same. — E. § 243; V. a. (No. 1074) 19; T. a. (33 Vic. No. 22) 206; S. A. a. (No. 557) 8, 202; Q. e. (27 Vic. No. 4) 172; W. A. a. (56 Vic. No. 8) 8, 204; N. Z. 6—11.

Division 6. Companies authorised to register.

Registration of existing companies. 167. 1. The following regulations shall be observed with respect to the registration of companies under this Division of this Part of this Act (that is to say): a) No company having the liability of its members limited by Act of Parliament, Royal Charter, or Letters Patent, and not being a joint stock company as hereinafter defined, shall so register; b) No company having the liability of its members limited by Act of Parliament, Royal Charter, or Letters Patent shall so register as an unlimited company, or as a company limited by guarantee; c) No company that is not a joint stock company as hereinafter defined shall so register as a company limited by shares; d) No company shall so register unless an assent to its so registering be given by a majority of such of its members as may be present personally, or by proxy in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose; e) Where a company not having the liability of its members limited by Act of Parliament, Royal Charter, or Letters Patent, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting; f) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes, in the event of the same being wound up during the time that he is a member, or within one year afterwards, to contribute to the assets of the company, such amount as may be required not exceeding a specified amount: i) For payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding-up the company; and ii) for the adjustment of the rights of the contributories amongst themselves. 2. In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member. — E. § 249; V. a. (No. 1074) 159; T. a. (33 Vic. No. 22) 210; S. A. a. (No. 557) 80; Q. e. (27 Vic. No. 4) 173; W. A. a. (56 Vic. No. 8) 82; N. Z. 272.

Companies capable of being registered. 168. 1. Subject as aforesaid, every company existing at the passing of this Act consisting of seven or more members, and any company hereafter formed in pursuance of any Act of Parliament other than this Act, Royal Charter, or Letters Patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Part of this Act as an unlimited company, or a company limited by shares, or a company limited by guarantee. 2. No such registration shall be invalid by reason that it has taken place with a view to the company being wound up. — E. § 249; V. a. (No. 1074) 160; T. a. (33 Vic. No. 22) 211; S. A. a. (No. 557) 81; Q. e. (27 Vic. No. 4) 174; W. A. a. (56 Vic. No. 8) 83; N. Z. 273.

Definition of "joint stock company". 169. 1. For the purposes of this Division of this Part of this Act a joint stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount: a) Divided into shares also of fixed amount; or b) Held and transferable as stock; or c) Divided and held partly in one way and partly in the other; and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons. 2. Such company, when registered with limited liability under this Part of this Act, shall be deemed to be a company limited by

shares. — E. § 250; V. a. (No. 1074) 161; T. a. (33 Vic. No. 22) 212; S. A. a. (No. 557) 82; Q. e. (27 Vic. No. 4) 175; W. A. a. (56 Vic. No. 8) 84; N. Z. 274.

[§ 170 provides for the unlimited liability of banking companies for notes issued by them.]

Requisites to registration by company. 171. Previously to the registration, in pursuance of this Division of this Part of this Act, of any joint stock company, there shall be delivered to the Registrar the following documents (that is to say): a) A list showing the names, addresses, and occupations of all persons who, on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number; b) A copy of any Act of Parliament, Royal Charter, Letters Patent, deed of settlement, contract of copartnership, or other instrument constituting or regulating the company; and also, if any such joint stock company is intended to be registered as a limited company: c) A statement specifying the following particulars (that is to say): i) the nominal capital of the company and the number of shares into which it is divided; ii) The number of shares taken and the amount paid on each share; iii) The name of the company, with the addition of the word "limited" as the last word thereof; with the addition, in the case of a company intended to be registered as a company limited by guarantee, of iv) The resolution declaring the amount of the guarantee. — E. § 252; V. a. (No. 1074) 163; T. a. (33 Vic. No. 22) 214; S. A. a. (No. 557) 83; Q. e. (27 Vic. No. 4) 177; W. A. a. (56 Vic. No. 8) 85; N. Z. 275.

Requisites to registration by company not being a joint stock company. 172. Previously to the registration, in pursuance of this Division of this Part of this Act, of any company not being a joint stock company, there shall be delivered to the Registrar: a) A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; also b) A copy of any Act of Parliament, Royal Charter, Letters Patent, deed of settlement, contract of copartnership, or other instrument constituting or regulating the company; with the addition, in the case of a company intended to be registered as a company limited by guarantee, of c) The resolution declaring the amount of guarantee. — E. § 253; V. a. (No. 1074) 164; T. a. (33 Vic. No. 22) 215; S. A. a. (No. 557) 84; Q. e. (27 Vic. No. 4) 178; W. A. a. (56 Vic. No. 8) 86; N. Z. 276.

Power for company to register stock instead of shares. 173. Where a joint stock company authorised to register under this Part of this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar: a) A statement of the amount of stock belonging to the company; and b) The names of the persons who were holders of such stock on some day to be named in the statement not more than six clear days before the day of registration. — E. § 252; V. a. (No. 1074) 165; T. a. (33 Vic. No. 22) 216; S. A. a. (No. 557) 85; Q. e. (27 Vic. No. 4) 179; W. A. a. (56 Vic. No. 8) 87; N. Z. 277.

Verification of particulars. 174. The lists of members and directors, and any other particulars relating to the company hereby required to be delivered to the Registrar shall be verified by a statutory declaration of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company. — E. § 254; V. a. (No. 1074) 166; T. a. (33 Vic. No. 22) 217; S. A. a. (No. 557) 86; Q. e. (27 Vic. No. 4) 180; W. A. a. (56 Vic. No. 8) 88; N. Z. 278.

Evidence of existence as a company may be required. 175. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or is not a joint stock company as hereinbefore defined. — E. § 255; V. a. (No. 1074) 167; T. a. (33 Vic. No. 22) 218; S. A. a. (No. 557) 87; Q. e. (27 Vic. No. 4) 181; W. A. a. (56 Vic. No. 8) 89; N. Z. 279.

Notice to customers on registration of limited banking company. 176. 1. Every banking company existing at the passing of this Act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company. 2. Such notice shall be given either by delivering the same to such person or firm, or leaving the same, or putting the same as a prepaid letter into the post addressed to him or them at such address as shall have been last communicated

to, or otherwise become known as his or their address by, the company. 3. In case the company omits to give any such notice as is hereinbefore required to be given, then, as between the company and the persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation. — E. § 256; V. a. (No. 1074) 168; T. a. (33 Vic. No. 22) 219; Q. e. (27 Vic. No. 4) 182.

Exemption from fees. 177. No fees shall be charged in respect of the registration of any company, in pursuance of this Division of this Part of this Act, in cases: a) Where such company is not registered as a limited company; or b) Where, previously to its being registered as a limited company, the liability of the shareholders was limited by some other Act of Parliament, or by Royal Charter, or Letters Patent. — E. § 257; V. a. (No. 1074) 169; T. a. (33 Vic. No. 22) 220; S. A. a. (No. 557) 88; Q. e. (27 Vic. No. 4) 183; W. A. a. (56 Vic. No. 8) 90; N. Z. 280.

Change of name. 178. A company authorised by this Division of this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited". — E. § 258; V. a. (No. 1074) 170; T. a. (33 Vic. No. 22) 221; S. A. a. (No. 557) 89; Q. e. (27 Vic. No. 4) 184; W. A. a. (56 Vic. No. 8) 91; N. Z. 281.

Certificate of registration. 179. 1. Upon compliance with the requisitions in this Division of this Part of this Act contained with respect to registration, and on payment of such fees (if any) as are payable under the Table marked B in the second Schedule hereto, the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Part of this Act, and in the case of a limited company that it is limited. 2. Thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands and to exercise all the functions of an incorporated company. — E. § 259; V. a. (No. 1074) 171; T. a. (33 Vic. No. 22) 222; S. A. a. (No. 557) 90; Q. e. (27 Vic. No. 4) 185; W. A. a. (56 Vic. No. 8) 92; N. Z. 282.

Certificate to be evidence of compliance with Act. 180. 1. A certificate of incorporation given at any time to any company registered in pursuance of this Division of this Part of this Act shall be conclusive evidence: a) That all the requisitions herein contained in respect of registration under this Part of this Act have been complied with; and b) That the company is authorised to be registered under this Part of this Act as a limited or unlimited company, as the case may be. 2. The date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Part of this Act. — V. a. (No. 1074) 172; T. a. (33 Vic. No. 22) 223; S. A. a. (No. 557) 91; Q. e. (27 Vic. No. 4) 186; W. A. a. (56 Vic. No. 8) 93; N. Z. 283.

Vesting of property. 181. All such real and personal estate as may belong to or be vested in a company at the date of its registration under this Division of this Part of this Act shall on registration pass to and vest in the company as incorporated under this Division of this Part of this Act. — E. § 260; V. a. (No. 1074) 173; T. a. (33 Vic. No. 22) 224; S. A. a. (No. 557) 92; Q. e. (27 Vic. No. 4) 187; W. A. a. (56 Vic. No. 8) 94; N. Z. 284.

Previous obligations not affected. 182. The registration in pursuance of this Division of this Part of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce any debt or obligation incurred or any contract entered into by, to, with, or on behalf of such company previously to such registration. — E. § 261; V. a. (No. 1074) 174; T. a. (33 Vic. No. 22) 225; S. A. a. (No. 557) 93; Q. e. (27 Vic. No. 4) 188; W. A. a. (56 Vic. No. 8) 95; N. Z. 285.

Continuation of existing actions and suits. 183. 1. All such actions, suits, and other legal proceedings as may at the time of the registration of any company registered in pursuance of this Division of this Part of this Act have been commenced by or against such company, or the public officer, or any member thereof, may be continued in the same manner as if such registration had not taken place. 2. Execution shall not issue against the effects of any individual member of such company upon any judgment, decree, or order obtained in any action, suit, or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding-up the company. — E. § 262; V. a. (No. 1074) 175;

T. a. (33 Vic. No. 22) 226; S. A. a. (No. 557) 94; Q. e. (27 Vic. No. 4) 189; W. A. a. (56 Vic. No. 8) 96; N. Z. 286.

Effect of registration. 184. 1. When a company is registered under this Division of this Part of this Act, all provisions contained in any Act of Parliament, deed of settlement, contract of copartnership, Royal Charter, Letters Patent, or other instrument constituting or regulating such company, including in the case of a company registered as a company limited by guarantee the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association. 2. All the provisions of this Part of this Act shall apply to such company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Part of this Act subject to the provisions following (that is to say): a) Table A in the second Schedule to this Act shall not, unless adopted by special resolution, apply to any company registered under this Part of this Act in pursuance of this Division thereof; b) The provisions of this Part of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered; c) No company shall have power to alter any provision contained in any Act relating to the company; d) No company shall have power without the sanction of the Governor to alter any provision contained in any Royal Charter or Letters Patent relating to the company; e) Nothing herein contained shall authorise any company to alter any such provisions contained in any deed of settlement, contract of copartnership, Royal Charter, Letters Patent, or other instrument constituting or regulating the company, as would if such company had originally been formed under this Part of this Act have been contained in the memorandum of association, and are not authorised to be altered by this Part of this Act. 3. Nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Division of this Part of this Act, by virtue of any Act of Parliament, deed of settlement, contract of copartnership, Royal Charter, Letters Patent, or other instrument constituting or regulating the company. — E. § 263; V. a. (No. 1074) 176; T. a. (33 Vic. No. 22) 227; S. A. a. (No. 557) 95; Q. e. (27 Vic. No. 4) 190; W. A. a. (56 Vic. No. 8) 97; N. Z. 287.

Division 7. Actions by unregistered companies.

Provision in case of unregistered company. 185. 1. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the order made for winding-up such company, or by any subsequent order, direct that the whole or any part of such real and personal estate, as may belong to or be vested in: a) The company; or b) Any person in trust for or on behalf of the company, is to vest in the official liquidator by his official name, and thereupon the same or such part thereof as may be specified in the order shall vest accordingly. 2. The official liquidator may in his official name, or in such name, and after giving such indemnity, as the Court directs, bring or defend any action, suit, or other proceeding relating to any property vested in him, or any action, suit, or other proceeding necessary to be brought or defended for the purpose of effectually winding up the company and recovering the property thereof. — E. § 272; V. a. (No. 1074) 187; T. c. (59 Vic. No. 19) 24; S. A. a. (No. 557) 193; Q. e. (27 Vic. No. 4) 197; W. A. a. (56 Vic. No. 8) 195. — A foreign company in course of being wound up elsewhere may be wound up as an unregistered company. — In re Federal Bank of Australia, 3 B. C. (N. S. W.) 80. So may a company registered under the *Mining Partnerships Act, 1900*. — In re Grand United G. M. Co., 10 L. R. (N. S. W.) (Eq.) 269; 6 W. N. (N. S. W.) 106. Cp. In re N. S. W. Cooperative G. M. Co., 6 B. C. (N. S. W.) 61.

Part II. No-liability Mining Companies.

[§§ 186—224 relate to no-liability mining companies.]

Part III. General Provisions.

Power of companies to change name. 225. 1. Any company registered under this Act may, with the sanction of a special resolution of the company and with the approval of the Governor, testified in writing under the hand of the Clerk of the Executive Council, change its name, and upon such change being made the

Registrar shall enter the new name on the register in the place of the former name, and shall sign a certificate of registration or incorporation altered to meet the circumstances of the case, and all certificates of incorporation or registration thereafter issued shall be altered in like manner. 2. No such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company; and any legal proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name. — E. § 8; V. a. (No. 1074) 22; T. a. (33 Vic. No. 22) 13; S. A. a. (No. 557) 65; Q. e. (27 Vic. No. 4) 12; W. A. a. (56 Vic. No. 8) 67; N. Z. 160.

Register primâ facie evidence. 226. The register of members of any company registered under this Act shall be primâ facie evidence that the persons named therein as members of such company are such members, and shall be primâ facie evidence of any other matters by this Act directed or authorised to be inserted therein. — E. § 33; V. a. (No. 1074) 38; T. a. (33 Vic. No. 22) 39; S. A. a. (No. 557) 37; Q. e. (27 Vic. No. 4) 36; W. A. a. (56 Vic. No. 8) 38; N. Z. 109.

Registered office. 227. 1. Every company registered under this Act shall have a registered office situated in New South Wales to which all communications and notices may be addressed. 2. If any company registered under this Act carries on business without having such registered office, such company, and in the case of a no-liability company, such company and the manager or secretary thereof respectively, shall be liable to a penalty not exceeding five pounds for every day during which business is so carried on. — E. § 62; V. a. (No. 1074) 40; T. a. (33 Vic. No. 22) 43; S. A. a. (No. 557) 38; Q. e. (27 Vic. No. 4) 38; W. A. a. (56 Vic. No. 8) 39; N. Z. 124.

Service of notices, etc., on company. 228. 1. Service at the registered office of any company registered under this Act of any communication or notice, or of any writ, declaration, summons, plaint, order, or other document, proceeding, or process whatsoever in any action, suit, proceeding, or matter, either by leaving the same at such office or by sending the same through the post, postage prepaid (and in the case of a no-liability company also registered), addressed to the company at such office, shall be deemed to be service upon the company. 2. In the event of there being no registered office, the unregistered office, or, in the case of a no-liability company, the intended registered office mentioned in the memorandum for registration shall be deemed to be the registered office of the company for the purposes of this section. — E. § 116; V. a. (No. 1074) 63; T. a. (33 Vic. No. 22) 68; S. A. a. (No. 557) 203, 240; Q. e. (27 Vic. No. 4) 62; W. A. a. (56 Vic. No. 8) 205, 240; N. Z. 151.

Rules as to service by post. 229. Any document to be served by post on any company registered under this Act shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof, and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was put into the post-office, postage prepaid, or registered and postage prepaid, as the case may be. — V. a. (No. 1074) 64; T. a. (33 Vic. No. 22) 69; S. A. a. (No. 557) 241; Q. e. (27 Vic. No. 4) 63; W. A. a. (56 Vic. No. 8) 241; N. Z. 152.

Authentication of notices, etc., of company. 230. 1. Any summons, notice, order, or proceeding requiring authentication by any company registered under this Act shall be sufficiently authenticated if signed by any director, manager, secretary, or other authorised officer of the company, and in the case of a no-liability company shall be also sufficiently authenticated if the name of any director, manager, secretary, or other authorised officer of the company is printed thereon. 2. No such summons, notice, order, or proceeding need be under the common seal of the company, and any such summons, notice, order, or proceeding may be in writing or in print, or partly in writing and partly in print. 3. This section shall not apply to any documents which by this Act are to be filed or lodged with the Registrar, which shall be signed or authenticated as by this Act required, or in the absence of any such requirement shall be signed or authenticated by the manager or secretary of the company. — E. § 117; V. a. (No. 1074) 65; T. a. (33 Vic. No. 22) 70; S. A. a. (No. 557) 242; Q. e. (27 Vic. No. 4) 64; W. A. a. (56 Vic. No. 8) 242; N. Z. 153.

Notice of change of registered office. 231. 1. Notice of the situation of the registered office of any company registered under this Act and of any change therein shall be given to the Registrar. 2. In the case of a no-liability company, if such change shall be from one town or district to another, such change shall be advertised

once at least in the *Gazette* and in one newspaper circulating in the town or district from which the company's registered office has been or is being removed. 3. Until such notice is given, the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office. — E. § 62; V. a. (No. 1074) 40; T. a. (33 Vic. No. 22) 44; S. A. a. (No. 557) 38 (2); Q. e. (27 Vic. No. 4) 39, f. (53 Vic. No. 18) 33; W. A. a. (56 Vic. No. 8) 39 (2); N. Z. 125.

Remedy for improper entry or omission of entry in register. Notice to Registrar of rectification of register. 232. 1. If the name of any person is without sufficient cause entered in or omitted from the register of members of any company registered under this Act, or if default is made or unnecessary delay takes place in entering on the register of members the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company or the company itself, may by motion in the Supreme Court, either in its common law or in its equitable jurisdiction, or by application to a Judge in chambers, or in such other manner as such Court may direct, apply for an order that the register may be rectified, and such Court or Judge may either refuse such application, with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company or any other party to such proceeding to pay all the costs of such a motion or application, and any damages the party aggrieved may have sustained. 2. Such Court or Judge may in any proceeding under this section decide any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally such Court or Judge may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register or the adjustment of the rights of the parties thereto. 3. Such Court or Judge may direct an issue to be tried in the said Court on the trial of which any question of law may be raised for decision. 4. Whenever any order has been made rectifying the register of members in the case of a company by Part I. of this Act required to send a list of its members to the Registrar, such Court or Judge shall direct that due notice of such rectification be given to the Registrar. — E. § 32; V. a. (No. 1074) 36, 37; T. a. (33 Vic. No. 22) 37, 38; S. A. a. (No. 557) 35, 36; Q. e. (27 Vic. No. 4) 34, 35; W. A. a. (56 Vic. No. 8) 36, 37; N. Z. 106 to 108. — The provisions of this section apply also to extra-colonial registers. — *Supra*, § 28. See also b. (No. 47 of 1900) § 1, *infra*. — This section merely provides a new and simple procedure in lieu of a suit. — In re New Pinnacle, etc., Co., 18 L. R. (N. S. W.) (Eq.) 168; 8 B. C. (N. S. W.) 1. Where a contract was not registered in conformity with § 55, and shares were issued, but it appeared that the company was solvent, and creditors fully protected, the court may order the rectification of the register by ordering the striking out of the names of the holders of the shares so issued, and permit the issue of new shares after a proper agreement had been made and registered, it appearing that the former agreement was not registered owing to the mistake of the solicitors. — In re Wright, Heaton & Co., 5 B. C. (N. S. W.) 1. Cp. In re Sydney, etc., Co., 5 B. C. (N. S. W.) 45. The right to have a name removed may be lost through acquiescence. — In re Teralba C. M. Co., 1 B. C. (N. S. W.) 13. Calls paid by a person whose name is improperly on the register may be recovered. — In re Wattamolla Dairy Co., 3 B. C. (N. S. W.) 21. As to practice, see In re Australian Cycle Insurance Co., 7 B. C. (N. S. W.) 39; In re Gurney, etc., Co., 6 W. N. (N. S. W.) 150; Ex parte Moon, 11 L. R. (N. S. W.) (Eq.) 288. — The directors must exercise their power of refusal to register transfers of shares in good faith. — New Lambton, etc., Co. v. London Bank of Australia, 1 C. L. R. 524. — As to power of company to refuse to register a transfer; see further In re New Lambton, etc., Co., 4 S. R. (N. S. W.) 603; 21 W. N. (N. S. W.) 202; 1 C. L. R. 524; In re Commercial Banking Co., 9 B. C. (N. S. W.) 41, 47; In re N. S. W., etc., Co., 3 W. N. (N. S. W.) 99; Lobb v. A. S. N. Co., 7 S. C. R. (N. S. W.) 278; 10 S. C. R. (N. S. W.) 1; In re Wentworthville Estate Co., 2 B. C. (N. S. W.) 43.

Copies of memorandum, etc., to be given to members. 233. A copy of the memorandum of association, having annexed thereto the articles of association (if any) in the case of a company formed under Part I. of this Act, and in the case of a no-liability company, a copy of the memorandum for registration of the company, and also in any case where the company has rules other than those in the seventh Schedule to this Act, a copy of the company's rules shall be forwarded to every member at his request, on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy, and if any company makes default in forwarding a copy of the memorandum of association or memorandum for registration and articles of association or rules, as the case may be, to a member,

in pursuance of this section, the company so making default shall, for each offence, incur a penalty not exceeding one pound. — E. § 18; V. a. (No. 1074) 20; T. a. (33 Vic. No. 22) 19; S. A. a. (No. 557) 22; Q. e. (27 Vic. No. 4) 18; W. A. a. (56 Vic. No. 8) 23; N. Z. 25.

Prohibition against identity of name in company. 234. 1. No company shall be registered under this Act under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being wound up, and testifies its consent in such manner as the Registrar requires. 2. If any company through inadvertence or otherwise is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company, where such company is a no-liability company, shall within such time after being served with a notice by the Registrar requiring such company so to do, as, having regard to the requirements of section two hundred and twenty-five of this Act, the Registrar deems reasonable, and, where such company is formed or registered under Part I. of this Act may, with the sanction of the Registrar, change its name, and upon such change being made the Registrar shall enter the new name on the register in the place of the former name, and shall sign a certificate of registration or incorporation, altered to meet the circumstances of the case. 3. No such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced by or against the company by its new name that might have been continued or commenced by or against the company by its former name. — E. § 8; V. a. (No. 1074) 21; T. a. (33 Vic. No. 22) 20; S. A. a. (No. 557) 23; Q. e. (27 Vic. No. 4) 19; W. A. a. (56 Vic. No. 8) 24; N. Z. 27, 28.

Shares in company personal property. 235. The shares or other interest of any member in a company registered under this Act shall be personal property, capable of being transferred in manner provided by the rules or regulations of the company, and shall not be of the nature of real estate, and each share shall be distinguished by its appropriate number. — E., § 22; V. a. (No. 1074) 23; T. a. (33 Vic. No. 22) 22; S. A. a. (No. 557) 24; Q. e. (27 Vic. No. 4) 21; W. A. a. (56 Vic. No. 8) 25; N. Z. 30.

Transfer by personal representative. 236. Any transfer of the share or other interest of a deceased member of a company registered under this Act made by his personal representative shall, notwithstanding that such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer. — E. § 29; V. a. (No. 1074) 25; T. a. (33 Vic. No. 22) 24; S. A. a. (No. 557) 27; Q. e. (27 Vic. No. 4) 23; W. A. a. (56 Vic. No. 8) 28; N. Z. 32.

No entry of trusts on register. 237. No notice of any trust expressed, implied, or constructive shall be entered on the register, or be receivable by the Registrar in the case of companies registered under this Act. — E. § 27; V. a. (No. 1074) 31; T. a. (33 Vic. No. 22) 32; S. A. a. (No. 557) 31; Q. e. (27 Vic. No. 4) 29; W. A. a. (56 Vic. No. 8) 32; N. Z. 103. — A partner allowing shares to stand in a copartner's name may assert his title against a transferee from the copartner. — *In re Mount David, etc., Co.*, 19 L. R. (N. S. W.) (Eq.) 95; 8 B. C. (N. S. W.) 28.

Certificate of shares. 238. A certificate, under the common seal of the company, specifying any shares or stock held by any member of any company registered under this Act shall be *prima facie* evidence of the title of the member to the shares or stock therein specified. — E. § 23; V. a. (No. 1074) 32; T. a. (33 Vic. No. 22) 33; S. A. a. (No. 557) 32; Q. e. (27 Vic. No. 4) 30; W. A. a. (56 Vic. No. 8) 33; N. Z. 31 (1).

Inspection of register. 239. 1. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company. 2. Except when closed as hereinafter mentioned, it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe for each inspection. 3. Every such member or other person may require, in the case of a company registered under Part I. of this Act, a copy of the register or any part thereof, or of the list or summary of members as is in Part I. of this Act mentioned, and, in the case of a no-liability company, a list of

the names and addresses of the members of the company, with the number of shares held by each, on payment of sixpence for every hundred words required to be copied. 4. If such inspection or copy or list is refused, the company, and every director, manager, and secretary of the company who knowingly authorises or permits such refusal, shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues. 5. In addition to the above penalty, any Judge sitting in chambers may, by an order, compel an immediate inspection of the register. — E. § 31; V. a. (No. 1074) 33; T. a. (33 Vic. No. 22) 34; S. A. a. (No. 557) 33; Q. e. (27 Vic. No. 4) 31; W. A. a. (56 Vic. No. 8) 34; N. Z. 104. — The provisions of this section apply also to extracolony registers. — § 28, *Supra*.

Power to close register. 240. Any company registered under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty, and in the case of a no-liability company, sixty days in each year. — E. § 31; V. a. (No. 1074) 34; T. a. (33 Vic. No. 22) 35; S. A. a. (No. 557) 34; Q. e. (27 Vic. No. 4) 32; W. A. a. (56 Vic. No. 8) 35; N. Z. 105.

Contracts, how made. 241. Contracts on behalf of any company registered under this Act may be made as follows (that is to say): 1. Any contract which, if made between private persons, would be by law required to be in writing, and under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged. 2. Any contract which, if made between private persons, would be by law required to be in writing and signed by the party to be charged therewith, may be made on behalf of the company in writing, signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged. 3. Any contract which, if made between private persons, would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and its successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be. — E. § 76; V. a. (No. 1074) 47; T. a. (33 Vic. No. 22) 60; S. A. a. (No. 557) 44; Q. e. (27 Vic. No. 4) 47; W. A. a. (56 Vic. No. 8) 46; N. Z. 146, 147. — The retainer of a solicitor need not be under seal. — *Gale v. Wingello C. M. Co.*, 11 L. R. (N. S. W.) (L.) 79; 6 W. N. (N. S. W.) 136; *Aktiebolaget Molubacka Irysil v. Burns*, 14 L. R. (N. S. W.) 94; 9 W. N. (N. S. W.) 107.

Company to hold meeting within four months after incorporation. 242. Every company formed under Part I. and every company registered under Part II. of this Act shall hold a general meeting within four months after its incorporation, and if such meeting is not held the company and every director, manager, or secretary of the company who knowingly authorises or permits such default shall be liable to a penalty not exceeding, in the case of a company formed under Part I. of this Act, five, and in the case of a no-liability company, two pounds a day for every day after the expiration of such four months until the meeting is held. V. f. (No. 1482) 55 (1, 8); T. a. (33 Vic. No. 22) 53; S. A. a. (No. 557) 47; Q. f. (53 Vic. No. 18) 34; W. A. a. (56 Vic. No. 8) 49; N. Z. 87.

Register of mortgages. 243. 1. Every limited and no-liability company registered under this Act shall keep a register of all mortgages and charges specifically affecting property or rights of the company, and shall enter in such register in respect of each mortgage or charge: a) A short description of the property or rights mortgaged or charged; b) The amount of charge created; c) The names of the mortgagees or persons entitled to such charge. 2. If any property or rights of the company is or are mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds. 3. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company in the case of a limited company, and in the case of a no-liability company by any person at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director, manager, or secretary of the company autho-

rising or knowingly and wilfully permitted¹⁾ such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues. 4. In addition to the above penalty any Judge sitting in chambers may by order compel an immediate inspection of the register. — E. § 100, 101; V. a. (No. 1074) 43, f. (No. 1482) 53, 54; T. a. (33 Vic. No. 22) 47; S. A. a. (No. 557) 41; Q. e. (27 Vic. No. 4) 42; W. A. a. (56 Vic. No. 8) 43; N. Z. 129. — Debentures need not in order to be valid be registered as bills of sale. — Braithwaite v. Mc Arthur, 19 L. R. (N. S. W.) (Eq.) 158, 9 B. C. (N. S. W.) 38. Campbell v. Harrison, 3 S. R. (N. S. W.) 432; 20 W. N. (N. S. W.) 170. A debenture may cover uncalled capital, and such capital would be included under the term “future property”. — Ansted v. Land Co., 14 L. R. (N. S. W.) (Eq.) 330; 4 B. C. (N. S. W.) 23; In re Woodstock Fruit Co., 7 B. C. (N. S. W.) 32; In re Anglo-Australian, etc., Co., 14 L. R. (N. S. W.) (Eq.) 97; 3 B. C. (N. S. W.) 97; 16 L. R. (N. S. W.) (Eq.) 38; 5 B. C. (N. S. W.) 57.

Promissory notes and bills of exchange. 244. A promissory-note or bill of exchange shall be deemed to have been made, drawn, accepted, or endorsed by any company registered under this Act, if made, drawn, accepted, or endorsed: a) In the name of the company by any person acting under the authority of the company; or b) By or on behalf or on account of the company by any person acting under the authority of the company. — E. § 77; V. a. (No. 1074) 48 T. a. (33 Vic. No. 22) 51; S. A. a. (No. 557) 45; Q. e. (27 Vic. No. 4) 46; W. A. a. (56 Vic. No. 8) 47; N. Z. 148. — For the liability of directors on negotiable instruments signed on behalf of the company, see Imperial Land Co. v. Melvey, 6 W. N. (N. S. W.) 14; English, etc., Bank v. Gunn, 10 S. C. R. (N. S. W.) 244; Hoskins v. Thomson, 14 L. R. (N. S. W.) 323; 10 W. N. (N. S. W.) 58.

Prohibition against carrying on business with less than seven members. 245. If any company registered under this Act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same without the joinder in the action or suit of any other member. — E. § 115; V. a. (No. 1074) 49; T. a. (33 Vic. No. 22) 52; S. A. a. (No. 557) 46; Q. e. (27 Vic. No. 4) 47; W. A. a. (56 Vic. No. 8) 48; N. Z. 132.

General meeting once at least in every year. 246. A general meeting of every company registered under this Act shall be held once at least in every year. — E. § 64; V. a. (No. 1074) 50; T. a. (33 Vic. No. 22) 54; S. A. a. (No. 557) 47 (2); Q. e. (27 Vic. No. 4) 48; W. A. a. (56 Vic. No. 8) 49 (2); N. Z. 88.

Definition of special resolution. 247. 1. A resolution passed by a company registered under this Act shall be deemed to be special whenever: a) A resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the rules or regulations of the company to vote, as may be present in person or by proxy (in cases where by the rules or regulations of the company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given; and b) Such resolution has been confirmed by a majority of such members for the time being entitled according to the rules or regulations of the company to vote as may be present in person or by proxy at a subsequent general meeting of which notice has been duly given, and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed. 2. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the same. 3. Notice of any meeting shall for the purposes of this section be deemed to be duly given, and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the rules or regulations of the company. 4. In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the rules or regulations of the company. — E. § 69; V. a. (No. 1074) 52; T. a. (33 Vic. No. 22) 56; S. A. a. (No. 557) 3; Q. e. (27 Vic. No. 4) 51; W. A. a. (56 Vic. No. 8) 3; N. Z. 91. — As to what constitutes a sufficient notice of a meeting, see Israel v. Atlas Engineering Co., 10 L. R. (N. S. W.) (Eq.) 277; In re Katoomba, etc., Co., 13 L. R. (N. S. W.) (Eq.) 70; 3 B. C. (N. S. W.) 1.

¹⁾ *Sic*; obviously “permitting”.

A shareholder present may be estopped from denying sufficiency of notice. — *In re Neokratine, etc., Co.*, 12 L. R. (N. S. W.) (Eq.) 269; 2 B. C. (N. S. W.) 29. — As to sufficiency of notice of the possible adoption of an extraordinary resolution, see *In re N. S. W., etc., Co.*, 10 L. R. (N. S. W.) (Eq.) 214; 6 W. N. (N. S. W.) 63.

Provision where no regulations as to various matters. 248. In default of any rules or regulations on the subject: a) Every member shall have one vote; b) A general meeting shall be held to be duly summoned when seven days notice thereof in writing has been served on every member in the manner in which notices are required to be served in the case of the companies formed or registered under Part I. of this Act by the Table marked A in the second Schedule hereto, and, in the case of no-liability companies by the rules in the seventh Schedule to this Act; c) Five members shall be competent to summon a meeting; d) Any person elected by the members present may preside as chairman of a meeting. — E. § 67; V. a. (No. 1074) 53; T. a. (33 Vic. No. 22) 57; S. A. a. (No. 557) 49; Q. e. (27 Vic. No. 4) 52; W. A. a. (56 Vic. No. 8) 51; N. Z. 90. — *Cp. Giblin v. British-Australian, etc., Co.*, 1 B. C. (N. S. W.) 77.

Registration of special resolution. 249. 1. A copy of any special resolution whatever and of any extraordinary resolution for winding-up a company voluntarily under Part I. of this Act, which is passed by any company registered under this Act shall be printed and forwarded to the Registrar and be recorded by him. 2. If such copy is not so forwarded within fifteen days from the date of the confirmation or passing as the case may be of the resolution, the company, and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits such default, shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded. — E. § 70; V. a. (No. 1074) 54, f. (No. 1482) 57; T. a. (33 Vic. No. 22) 58; S. A. a. (No. 557) 51; Q. e. (27 Vic. No. 4) 53; W. A. a. (56 Vic. No. 8) 53; N. Z. 93.

Copies of special resolutions to be annexed to rules or articles. 250. 1. Where articles of association or rules have been registered a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association or rules which may be issued after the passing of such resolution. 2. Where no articles of association or rules have been registered a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct. 3. If any company makes default in complying with the provisions of this section, such company, and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits such default, shall incur a penalty not exceeding one pound for each copy in respect of which such default is made. — E. § 70; V. a. (No. 1074) 55; T. a. (33 Vic. No. 22) 59; S. A. a. (No. 557) 52; Q. e. (27 Vic. No. 4) 54; W. A. a. (56 Vic. No. 8) 54; N. Z. 94.

Appointment of attorney by company. 251. Any company registered under this Act may by instrument in writing under its common seal appoint any person its attorney, either generally or in respect of any specified matters, in the case of a company formed or registered under Part I. of this Act, to execute deeds on its behalf in any place wheresoever situate, and, in the case of a no-liability company, to act in any place wheresoever situate, and every deed signed by such attorney on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company. — E. § 78; V. a. (No. 1074) 56; T. a. (33 Vic. No. 22) 61; S. A. a. (No. 557) 53; Q. e. (27 Vic. No. 4) 54; W. A. a. (56 Vic. No. 8) 55; N. Z. 150.

Examination of affairs of company by inspectors. 252. The Governor may appoint one or more inspectors to examine into the affairs of any company registered under this Act, and to report thereon in such manner as the Governor may direct upon the applications following (that is to say): a) In the case of a banking company that has a capital divided into shares, upon the application of members holding not less than one-third part of the whole shares of the company for the time being issued; b) In the case of any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued; c) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members. — E. § 109 (1); V. a. (No. 1074) 57; T. a. (33 Vic. No. 22) 62; S. A. a. (No. 557) 54; Q. e. (27 Vic. No. 4) 56; W. A. a. (56 Vic. No. 8) 56; N. Z. 140.

Application for inspection to be supported by evidence. 253. 1. The application shall be supported by such evidence as the Governor may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same. 2. The Governor may also require the applicants to give security for payment of the cost of the inquiry before appointing any inspector. — E. § 109 (2); V. a. (No. 1074) 58; T. a. (33 Vic. No. 22) 63; S. A. a. (No. 557) 55; Q. e. (27 Vic. No. 4) 57; W. A. a. (56 Vic. No. 8) 57; N. Z. 141, 142.

Inspection of books and examination of officers of company. 254. 1. All officers and agents of the company shall produce, for the examination of the inspectors, all books and documents in their custody or power, and any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. 2. If any officer or agent of the company refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence. — E. § 109 (4, 5); V. a. (No. 1074) 59; T. a. (33 Vic. No. 22) 64; S. A. a. (No. 557) 56; Q. e. (27 Vic. No. 4) 58; W. A. a. (56 Vic. No. 8) 58; N. Z. 143 (1—3).

Result of examination, how dealt with. 255. 1. Upon the conclusion of the examination the inspectors shall report their opinion to the Governor, and such report shall be written or printed as the Governor directs. 2. A copy of such report shall be forwarded by the Colonial Secretary to the registered office of the company, and a further copy shall at the request of the members, upon whose application the inspection was made, be delivered to them, or to any one or more of them. 3. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members, upon whose application the inspectors were appointed: Provided that the Governor may direct the same to be paid out of the assets of the company, in which case the same shall become a debt from the company to such applicants, and may be recovered by process of law. — E. § 109 (6, 7); V. a. (No. 1074) 60; T. a. (33 Vic. No. 22) 65; S. A. a. (No. 557) 57; Q. e. (27 Vic. No. 4) 59; W. A. a. (56 Vic. No. 8) 59; N. Z. 143 (4—7).

Power of company to appoint inspectors. 256. 1. Any company registered under this Act may, by special resolution, appoint inspectors for the purpose of examining into the affairs of the company, and the inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor, but instead of making their report to the Governor, they shall make the same in such manner and to such persons as the company in general meeting directs. 2. The officers and agents of the company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question as they would have incurred if such inspector had been appointed by the Governor. — E. § 110; V. a. (No. 1074) 61; T. a. (33 Vic. No. 22) 66; S. A. a. (No. 557) 58; Q. e. (27 Vic. No. 4) 60; W. A. a. (56 Vic. No. 8) 60; N. Z. 144.

Report of inspectors to be evidence. 257. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in such report. — E. § 111; V. a. (No. 1074) 62; T. a. (33 Vic. No. 22) 67; S. A. a. (No. 557) 59; Q. e. (27 Vic. No. 4) 61; W. A. a. (56 Vic. No. 8) 61; N. Z. 145.

Recovery of penalties. 258. All offences under this Act made punishable by any penalty may be prosecuted summarily before two or more justices of the peace. — V. f. (No. 1482) 173 (1); T. a. (33 Vic. No. 22) 71; S. A. a. (No. 557) 244; Q. e. (27 Vic. No. 4) 65; W. A. a. (56 Vic. No. 8) 244; N. Z. 158.

Provision as to costs in certain cases. 259. Where a limited or no-liability company is plaintiff in any action, suit, or other legal proceedings, any Judge having jurisdiction in the matter may if it appears that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given. — E. § 278; V. a. (No. 1074) 68; T. a. (33 Vic. No. 22) 72, 74; S. A. a. (No. 557) 62, 249; Q. e. (27 Vic. No. 4) 66, 68; W. A. a. (56 Vic. No. 8) 64, 250; N. Z. 155. — Cp. *In re Anglo-Australian Investment Co.*, 9 W. N. (N. S. W.) 128. As to security for costs where plaintiff is a foreign company, see *Robinson v. Douglas*, 1 B. C. (N. S. W.) 12; *Brush, etc., Co. v. Kingsburg*, 2 B. C. (N. S. W.) 6.

Minutes of proceedings evidence of proceedings. 260. 1. Every company registered under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company and of the directors or managers of the company, in cases where there are directors or managers, to be duly entered in books, to be from time to time provided for the purpose. 2. Any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed, or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings. 3. Until the contrary is proved every general meeting of the company or meeting of directors or managers, in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had. 4. All appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualification. — E. § § 71, 74, 149 (10); V. a. (No. 1074) 67; T. a. (33 Vic. No. 22) 73; S. A. a. (No. 557) 60; Q. e. (27 Vic. No. 4) 67; W. A. a. (56 Vic. No. 8) 62; N. Z. 154. — For an application of the rule laid down in subsection (4), see *In re Neokratine Safety Explosive Co.*, 12 L. R. (N. S. W.) (Eq.) 269; 2 B. C. (N. S. W.) 29.

Liquidator may accept shares as consideration for sale of property of company. 261. 1. Where any company registered under this Act is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidator of the first-mentioned company may, with the sanction of a special resolution of the company by whom he was appointed, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement: a) Receive in compensation or part compensation for such transfer or sale, shares, debentures, policies, or other like interests in such other company for the purpose of distribution amongst the members of the company being wound up; or b) Enter into any other arrangement whereby the members of the company being wound up, may, in lieu of receiving cash shares, debentures, policies, or other like interests, or, in addition thereto, participate in the profits of, or receive any other benefit from, the purchasing company. 2. Any sale made or arrangement entered into by the liquidator, in pursuance of this section, shall be binding on the members of the company being wound up, subject to the provisions hereinafter contained. 3. If any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidator, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may require the liquidator to do one of the following things as the liquidators may prefer, that is to say: a) Abstain from carrying such resolution into effect; or b) Purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidator in such manner as may be determined by special resolution. 4. No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding-up the company or for appointing a liquidator, but if an order be made within a year for winding up the company by or subject to the supervision of the Court under Part I. of this Act, such resolution shall not be of any validity unless it is sanctioned by the Court. — E. § 192 (1—5); V. a. (No. 1074) 146; T. a. (33 Vic. No. 22) 189; S. A. a. (No. 557) 173; Q. e. (27 Vic. No. 4) 151; W. A. a. (56 Vic. No. 8) 175; N. Z. 259 (1—3). — A notice of sale to the new company need not expressly state that it was made under this section. — *Israel v. Atlas Engineering Co.*, 10 L. R. (N. S. W.) (Eq.) 277. A sale to a new company may be *bona fide* even though it is virtually only a reconstruction of the old company with enlarged capital, and that part of the consideration consisted of partly paid-up shares in the new company. — *Ibid.* A shareholder may lose his right to impugn the validity of a sale, not *ultra vires* of the company, by lapse of time. — *Ibid.* Where the shareholder in the old company fails to express his dissent within the time allowed in the Act his remedy is a petition for the compulsory winding-up of the old company. He can not maintain a suit against the directors of the old company for breach of trust. — *Gilmour v. Newcastle, etc., Society*, 18 L. R. (N. S. W.) (Eq.) 84. A creditor objecting to the transfer of the assets of the old company to a new one may petition for the winding-up

of the old company, but may not obtain an injunction to prevent the transfer of the assets. — *Gilbert v. Newcastle, etc., Society*, 17 L. R. (N. S. W.) (Eq.) 72; 6 B. C. (N. S. W.) 75. *Cp.* In *re Newcastle, etc., Society*, 18 L. R. (N. S. W.) (Eq.) 76; 7 B. C. (N. S. W.) 50. For a reconstruction deemed not fraudulent, see *In re New England G. M. Co.*, 13 L. R. (N. S. W.) (Eq.) 171; 2 B. C. (N. S. W.) 55; 3 B. C. (N. S. W.) 43. *Acts Shortening Act, 1897*, § 11, applies. A meeting held on 3d March, 1892, was held at an interval of not less than fourteen days from 18th February, 1892. — *In re Katoomba, etc., Co.*, 13 L. R. (N. S. W.) (Eq.) 70; 3 B. C. (N. S. W.) 1. *Cp.* In *re Anglo-Australian, etc., Co.*, 4 B. C. (N. S. W.) 63.

Mode of determining price. 262. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration under and in accordance with the provisions contained in Part I. of this Act in relation to arbitration. — E. § 192 (6); V. a. (No. 1074) 149; T. a. (33 Vic. No. 22) 190; S. A. a. (No. 557) 176; Q. e. (27 Vic. No. 4) 152; W. A. a. (56 Vic. No. 8) 178; N. Z. 259 (4, 5).

Preferences, etc. 263. 1. Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would if made or done by or against any individual be deemed to be void or voidable in the event of his bankruptcy shall, if made or done by or against a company, be deemed in the event of such company being wound up under Part I. of this Act, to be void or voidable in like manner. 2. Any conveyance or assignment made by a company registered under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents. — E. § 210; V. a. (No. 1074) 151; T. a. (33 Vic. No. 22) 199; S. A. a. (No. 557) 178; Q. e. (27 Vic. No. 4) 165; W. A. a. (56 Vic. No. 8) 180; N. Z. 246, 247. — *Cp.* In *re North Sydney, etc., Co.*, 14 L. R. (N. S. W.) (Eq.) 367; 4 B. C. (N. S. W.) 37; In *re A. Shadler*, 21 W. N. (N. S. W.) 217. A *bona fide* charge over uncalled capital is valid. — *In re Anglo-Australian, etc., Co.*, 14 L. R. (N. S. W.) (Eq.) 97; 3 B. C. (N. S. W.) 97.

Application of rules of bankruptcy. 264. 1. In the winding-up under Part I. of this Act of any company, no-liability company, or other association or society either voluntarily or by or under the supervision of the Court, as the case may be, the same rules shall prevail and be observed as regards: a) The respective rights of secured and unsecured creditors; and b) The declaration and distribution of dividends; and c) The proof and allowance of debts or claims against the assets of the company, as may be in force for the time being under the laws of bankruptcy with respect to the estates of bankrupts. 2. In the winding-up under Part I. of this Act of a no-liability company the same rules shall prevail and be observed as regards disclaimer of onerous property by the official liquidator, and as regards the consequences and incidents of such disclaimer, and as regards fraudulent preferences as may be in force for the time being under the laws of bankruptcy with respect to the estates of bankrupts. 3. For the purposes of this and the last preceding section: a) The presentation of a petition for winding up a company in the case of a company being wound up by the Court or under the supervision of the Court; and b) A resolution for winding-up the company in the case of a voluntary winding-up under Part I. of this Act shall be deemed to correspond with the act of bankruptcy in the case of an individual. — *Cp.* notes to § 263, *supra*.

General rules. 265. The Judges or any three of them may make such rules concerning the mode of proceeding to be had for winding up companies in the Court as may from time to time seem necessary; but the general practice of the Supreme Court in its equitable jurisdiction shall, so far as the same is applicable and not inconsistent with this Act or the rules made hereunder, apply to all proceedings for or in a winding-up. — V. a. (No. 1074) 157; T. a. (33 Vic. No. 22) 205; S. A. a. (No. 557) 188 (2, 3); Q. e. (27 Vic. No. 4) 171; W. A. a. (56 Vic. No. 8) 190 (2, 3); N. Z. 261.

Part IV. Reference to District Court.

[§§ 266—271 relate to the reference of winding-up proceedings to a District Court, or from one District Court to another; provide for appeals from such District Courts; empower the judges of the District Courts to frame rules and orders, and to fix the scale of costs and charges.]

Part V. Reconstructed Companies.

[§§ 272—277 relate to reconstructed companies. Authority is given to the Governor, by proclamation published in the *Gazette*, to apply these provisions to any reconstructed company named. The assets of the old company become vested in the new, the name of the old company is to be read as the name of the new one

in all legal instruments, and a similar substitution is to be made in the case of actions by or against the old company.]

Part VI. Miscellaneous Provisions applicable to certain Companies.

Members may sue and be sued by the company. 278. 1. Any past or present member of any joint stock company may, in respect of any claim or demand which: a) Such member may have, either solely or jointly with any other person, against such company, or the funds or property thereof; or b) Such company may have against such member solely or jointly with any other person, sue and be sued by such company, in the name of the officer thereto appointed, in any action, suit, or other proceeding. 2. No action, suit, or other proceeding shall be in anywise affected by reason of any party or other person in whom any interest may be averred, or who may be in anywise interested or concerned in any such action, suit, or other proceeding, being or having been a member of such company. 3. All such actions, suits, or other proceedings shall be conducted and have effect as if the same had been between strangers. — E. 1 & 2 Vic. c. 96, § 1.

Officer to be replaced as soon as possible. 279. 1. Any banking, trading, or other company which may by any Act sue or be sued in the name of any officer or other person thereto appointed shall, on the death, resignation, or removal of such officer or person, proceed with as little delay as possible to elect some other person in his stead. 2. If such election does not take place within one month from the date of such death, resignation, or removal, then all the privileges of the said company whose officer has so died, resigned, or been removed, conferred upon it by any Act, shall utterly cease and determine, and thenceforth any person may sue or proceed against any individual members of such company so losing its privileges as aforesaid.

Set-off. 280. 1. No claim or demand which any member of any joint stock company may have in respect of: a) His share of the capital or joint stock thereof; or b) Any dividends, interest, profits, or bonus payable or apportionable in respect of such share, shall be capable of being set off against any demand which the company may have against such member on any other account. 2. All proceedings in respect of any other matter or thing may be carried on as if no such claim or demand as above-mentioned existed. — E. 1 & 2 Vic. c. 96, § 4.

Member may be guilty of embezzling property of company. 281. 1. If any member of any such company or of any corporation: a) Steals or embezzles any property belonging to such company or corporation; or b) Commits any crime or offence against or with intent to injure or defraud such company or corporation, such member shall be liable to prosecution for any such crime or offence. 2. For the purposes of any such prosecution the property of such company or corporation may be stated as the property of the officer appointed to sue and be sued on behalf of such company or in the name of such corporation, as the case may be. 3. Any such member may thereupon be lawfully convicted as if he were not a member of such company or corporation, any law, usage, or custom to the contrary notwithstanding. — E. 1 & 2 Vic. c. 96, § 4.

Merits of any demand determined may be pleaded in bar. 282. In case the merits of any demand by or against any such company have been determined in any action, suit, or other proceeding by or against the officer of the company appointed as aforesaid, such proceedings may be placed in bar of any other action, suit, or other proceeding by or against the said company or officer for the same demand. — E. 1 & 2 Vic. c. 96, § 2.

Provisions of Acts enabling company to sue and be sued in name of officer to apply to suits under this Part of this Act. 283. All the provisions of any Act enabling any such company to sue and be sued in the name of an officer thereof relative to actions, suits, and proceedings commenced or prosecuted under the authority thereof shall be applicable to actions, suits, and proceedings commenced or prosecuted under the authority of this Part of this Act. — E. 1 & 2 Vic. c. 96, § 3.

Memorials to be recorded in office of Registrar-General. 284. 1. A memorial of the name of such officer appointed as aforesaid shall be registered in the office of the Registrar-General; and such memorial so registered shall, upon proof that such memorial is signed with the handwriting of the persons whose signatures appear thereto, be received in evidence in all proceedings and cases whatever as

proof of the appointment and authority of such officer. 2. In any action, suit, or other proceeding brought by any such officer the plaintiff or applicant shall not be nonsuited or fail for want of proof of the registration of such memorial unless it appear that no such memorial has been registered.

Schedules.

First Schedule.

Date of Act.	Title of Act.	Extent of Repeal.
3 Vic. No. 21.	An Act to make good certain contracts, &c.	The whole.
6 Vic. No. 2.	An Act for further facilitating proceedings by and against, &c., companies, &c.	The whole.
11 Vic. No. 56.	An Act to enable any joint stock company to sue any of its own Members, &c.	The whole.
37 Vic. No. 19.	Companies Act, 1874.	The whole.
48 Vic. No. 14.	Companies Extra-Colonial Registers Act of 1884.	The whole.
52 Vic. No. 14.	Companies Act of 1888.	The whole unrepealed portion.
55 Vic. No. 9.	Joint Stock Companies Arrangement Act, 1891.	The whole, except section 3 and so much of sections 4 and 6 as applies to section 3
57 Vic. No. 25.	Reconstructed Companies Act, 1894.	The whole.
60 Vic. No. 15.	No-Liability Mining Companies Act, 1896.	The whole.

Second Schedule.

Table A. Regulations for Management of a Company Limited by Shares other than a No-Liability Company.

Shares.

1. If several persons are registered as joint holders of any share any one of such persons may give effectual receipts for any dividend payable in respect of such share.

2. Every member shall, on payment of one shilling or such less sum as the company in general meeting may prescribe, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon.

3. If such certificate is worn out or lost, it may be renewed on payment of one shilling or such less sum as the company in general meeting may prescribe.

Call on shares.

4. The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call, and each member shall be liable to pay the amount of calls so made to the persons, and at the times and places appointed by the directors.

5. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

6. If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of ten pounds per centum per annum from the day appointed for the payment thereof to the time of the actual payment.

7. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of shares.

8. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register-book in respect thereof.

9. Shares in the company shall be transferred in the following form:

I, A. B., of _____, in consideration of the sum of _____ pounds paid to me by C. D., of _____, do hereby transfer to the said C. D. the share [or shares] numbered _____ standing in my name in the books of the _____ company to hold unto the said C. D., his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof, and I, the said C. D., do hereby agree to take the said share [or shares] subject to the same conditions. As witness our hands the _____ day of _____

10. The company may decline to register any transfer of shares made by a member who is indebted to them.

11. The transfer-book shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of shares.

12. The executors or administrators of a deceased member shall be the only persons recognised by the company as having any title to his share.

13. Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

14. Any person who has become entitled to a share, in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such shares.

15. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such shares.

16. The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

Forfeiture of shares.

17. If any member fails to pay any call on the day appointed for payment thereof the directors may, at any time thereafter during such time as the call remains unpaid, serve a notice on him requiring him to pay such call, together with the interest and any expenses that may have accrued by reason of such non-payment.

18. The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid, and shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable), and shall also state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.

19. If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter before payment of all calls, interest, and expenses due in respect thereof has been made be forfeited by a resolution of the directors to that effect.

20. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit.

21. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at time of the forfeiture.

22. A statutory declaration in writing that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of shares into stock.

23. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

24. When any shares have been converted into stock the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests in the same manner, and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

25. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interest in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company and for other purposes as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not if existing in shares have conferred such privileges or advantages.

Increase in capital.

26. The directors may with the sanction of a special resolution of the company previously given in general meeting increase its capital by the issue of new shares, such aggregate increase

to be of such amount, and to be divided into shares of such respective amounts as the company in general meeting directs, or if no direction is given as the directors think expedient.

27. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer if not accepted will be deemed to be declined, and after the expiration of such time or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

28. Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls and the forfeiture of shares on non-payment of calls or otherwise as if it had been part of the original capital.

General meetings.

29. The first general meeting shall be held at such time, not being more than four months after the registration of the company, and at such place as the directors may determine.

30. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting, and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

31. The above-mentioned general meetings shall be called ordinary meetings, all other general meetings shall be called extraordinary.

32. The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

33. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

34. Upon the receipt of such requisition, the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at general meetings.

35. Seven days' notice at the least specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business shall be given to the members in manner hereinafter mentioned, or in such other manner if any as may be prescribed by the company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

36. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend and the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

37. No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business; and such quorum shall be ascertained as follows, that is to say, if the persons who have taken shares in the company at the time of the meeting do not exceed ten in number the quorum shall be five, if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed twenty.

38. If within one hour from the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of the members shall be dissolved, in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

39. The chairman (if any) of the Board of Directors shall preside as chairman at every general meeting of the company.

40. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

41. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

42. At any general meeting unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

43. If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting, and in the case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

Votes of members.

44. Every member shall have one vote for every share up to ten, he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

45. If any member is a lunatic or person of unsound mind or an incapable person as defined in the *Lunacy Act of 1898*, he may vote by his committee or other legal curator.

46. If one or more persons are jointly entitled to a share, the member whose name stands first in the register of members as one of the holders of such share and no other shall be entitled to vote in respect of the same.

47. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

48. Votes may be given either personally or by proxy.

49. The instrument appointing a proxy shall be in writing under the hand of the appointer, or, if such appointer is a corporation, under their common seal, and shall be attested by one or more witnesses. No person shall be appointed a proxy who is not a member of the company.

50. The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in such instrument proposes to vote, but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution, unless it purports to appoint a proxy to act for the appointer during his absence from New South Wales.

51. Any instrument appointing a proxy shall be in the following form:

Company (limited).

I, _____ of _____, being a member
of the _____ company (limited), and entitled to _____ vote [or
_____ votes] hereby appoint _____, of _____ as my
proxy to vote for me and on my behalf at the ordinary [or extraordinary as the case
may be general] meeting of the company to be held on the _____ day of _____
_____, and at any adjournment thereof [or at any meeting of the company that
may be held in the year _____ or during my absence from the Colony
of New South Wales].

As witness my hand this _____ day of _____
Signed by the said _____ in the presence of _____

Directors.

52. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

53. Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

54. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of directors.

55. The business of the company shall be managed by the directors who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the foregoing Act or by these articles required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations (being not inconsistent with the aforesaid regulations or provisions) as may be prescribed by the company in general meeting, but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

56. The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of directors.

57. The office of director shall be vacated:

If he holds any other office or place of profit under the company.

If he becomes bankrupt or insolvent.

If he is concerned in or participates in the profits of any contract with the company. But the above rules shall be subject to the following exceptions: That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director, nevertheless he shall not vote in respect of such contract or work, and if he does so vote his vote shall not be counted.

Rotation of directors.

58. At the first ordinary meeting after the registration of the company, the whole of the directors shall retire from office, and at the first ordinary meeting in every subsequent year,

one-third of the directors for the time being, or if their number is not a multiple of three then the number nearest to one-third shall retire from office.

59. The one-third or other nearest number to retire during the first and second years ensuing, the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

60. A retiring director shall be re-eligible.

61. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

62. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time, until their places are filled up.

63. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

64. Any casual vacancy occurring in the Board of Directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

65. The company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of directors.

66. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

67. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

68. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

69. A committee may elect a chairman of their meetings. If no such chairman is elected or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

70. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

71. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

72. The directors may with the sanction of the company in general meeting declare a dividend to be paid to the members in proportion to their shares.

73. No dividend shall be payable except out of the profits arising from the business of the company.

74. The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof, and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

75. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

76. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned, and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

77. No dividend shall bear interest as against the company.

Accounts.

78. The directors shall cause true accounts to be kept:

Of the stock in trade of the company;

Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and

Of the credits and liabilities of the company.

The books of account shall be kept at the registered office of the company; and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business.

79. Once at the least in every year, the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year made up to a date not more than three months before such meeting.

80. The statement so made shall show arranged under the most convenient heads the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

81. A balance-sheet shall be made out in every year and laid before the company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this Table, or as near thereto as circumstances admit.

82. A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

83. Once at the least in every year the accounts of the company shall be examined and the correctness of the balance-sheet ascertained by one or more auditors.

84. The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the company in general meeting.

85. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

86. The auditors may be members of the company, but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company, and no director or other officer of the company is eligible during his continuance in office.

87. The election of auditors shall be made by the company at their ordinary meeting in each year.

88. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

89. Any auditor shall be re-eligible on his quitting office.

90. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

91. If no election of auditors is made in manner aforesaid, the Registrar may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

92. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

93. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; he may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the company.

94. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read, together with the report of the directors at the ordinary meeting.

Notices.

95. A notice may be served by the company upon any member, either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

96. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members, and notice so given shall be sufficient notice to all the holders of such share.

97. Any notice if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

Table B. Table of fees to be paid to the Registrar in respect of companies formed or registered under Part I. of the Act.

Fees to be paid by companies having a capital divided into shares other than no-liability companies.

	£	s.	d.
For registration of a company whose nominal capital does not exceed £ 1000 a fee of .	5	0	0
For registration of a company whose nominal capital exceeds £ 1000 the above fee of £ 5, with the following additional fees regulated according to the amount of nominal capital (that is to say):			
For every £ 1000 of nominal capital or part of £ 1000 after the			
first £ 5000 up to £ 100 000	0	5	0
For every £ 1000 of nominal capital or part of £ 1000 after the			
first £ 100 000	0	1	0
For registration of any increase of capital made after the first registration of the company the same fees per £ 1000 or part of a £ 1000 as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital on registration or afterwards any greater amount of fees than £ 50, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration			

Fees to be paid by companies not having a capital divided into shares.

For registration of a company whose number of members as stated in the articles of association does not exceed twenty	2	0	0
For registration of a company whose number of members as stated in the articles of association exceeds twenty but does not exceed one hundred	5	0	0
For registration of a company whose number of members as stated in the articles of association exceeds one hundred, but is not stated to be unlimited, the above fee of £ 5, with an additional 5 s. for every fifty members or less number than fifty members after the first hundred.			
For registration of a company in which the number of members is stated in the articles of association to be unlimited a fee of	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every fifty members or less than fifty members of such increase	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than £ 20 in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered other than the memorandum of association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar	0	5	0
For every search for or in connection with any memorandum of association, or for or in connection with any document filed having reference to any company .	0	1	0
For every certified copy of or extract from any document not exceeding six folios .	0	5	0
For each additional after the folio first six folios	0	0	8

Form C. Form of statement referred to in Division 3 of Part I. of the Act.

*The capital of the company is divided into shares of each
 The number of shares issued is
 Calls to the amount of pounds per share have been made under which the
 sum of pounds has been received.

*) If the company has no capital divided into shares the portion of the statement relating to capital and shares must be omitted.

The liabilities of the company on the first day of January [or July] were:

Debts owing to sundry persons by the company:

- On judgment £
- On specialty £
- On notes or bills £
- On simple contracts £
- On estimated liabilities £

The assets of the company on that day were:

- Government securities [*stating them*] £
- Bills of exchange and promissory-notes £.
- Cash at the bankers £
- Other securities £.

Third Schedule.

Form A. Memorandum of association of a company limited by shares.

1st. The name of the company is "The Eastern Steam-packet Company (Limited)".

2d. The registered office of the company will be situate in Sydney.

3d. The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object".

4th. The liability of the members is limited.

5th. The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses, and descriptions of subscribers.	Number of shares taken by each subscriber.
1. John Jones, of merchant	200
2. John Smith, of „	25
3. Thomas Green, of „	30
4. John Thompson, of „	40
5. Caleb White, of „	15
6. Andrew Brown, of „	5
7. Caesar White, of „	10
Total shares taken	325

Dated the 22d day of November, 18..

Witness to the above signatures:

(A. B., No. 13, Pitt-street, Sydney.)

Form B. Memorandum and articles of association of a company limited by guarantee, and not having a capital divided into shares.

Memorandum of association.

1st. The name of the company is "The Mutual Marine Association (Limited)".

2d. The registered office of the company will be situate in Sydney.

3d. The objects for which the company is established are "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects".

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being woundup during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company, contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding ten pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, and descriptions of subscribers.

- | | |
|--------------------------------|-----------|
| 1. John Jones, of | merchant. |
| 2. John Smith, of | " |
| 3. Thomas Green, of | " |
| 4. John Thompson, of | " |
| 5. Caleb White, of | " |
| 6. Andrew Brown, of | " |
| 7. Caesar White, of | " |

Dated the 22d day of November, 18..

Witness to the above signatures:

(A. B., No. 13, Pitt-street, Sydney.)

Articles of association to accompany preceding memorandum of association.

1. The company, for the purpose of registration, is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General meetings.

4. The first general meeting shall be held at such time, not being more than three months after the incorporation of the company, and at such place as the directors may determine.

5. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting, and if no other time or place is prescribed a general meeting shall be held on the first Monday in February in every year at such place as may be determined by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and they shall upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

9. Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition the requisitionists or any other five members may themselves convene a meeting.

Proceedings at general meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows, that is to say, if the members of the company at the time of the meeting do not exceed ten in number the quorum shall be five, if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting if convened upon the requisition of the members shall be dissolved. In any other case it shall stand adjourned to the same day in the following week at the same time and place, and if at such adjourned meeting a quorum of members is not present it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their own number to be chairman of such meeting.

16. The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolutions of the company in general meeting.

Votes of members.

19. Every member shall have one vote, and no more.

20. If any member is a lunatic, or a person of unsound mind, or an incapable person as defined in the *Lunacy Act of 1898*, he may vote by his committee or other legal curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointer, or if such appointer is a corporation under its common seal.

23. No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following terms:

Company (Limited).

I, _____ of _____ being a member of the _____ Company
(limited) hereby appoint _____ of _____ my proxy to vote for me and on my
behalf at the ordinary [or extraordinary as the case may be] general meeting of the
company to be held on the _____ day of _____ and at any adjournment thereof
to be held on the _____ day of _____ next [or at any meeting of the com-
pany that may be held in the year _____].
As witness my hand this _____ day of _____
Signed by the said _____ in the presence of _____

Directors.

25. The number of directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall for all the purposes of this Act be deemed to be directors.

Power of directors.

27. The business of the company shall be managed by the directors who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting. But no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of directors.

28. The directors shall be elected annually by the company in general meeting.

Business of company.

[Here insert rules as to mode in which business of insurance is to be conducted.]

Accounts.

29. The accounts of the company shall be audited by a committee of five members to be called the audit committee.

30. The first audit committee shall be nominated by the directors out of the body of members.

31. Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

32. The audit committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

33. The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company. They may at the expense of the company employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the company.

34. The audit committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations of the company, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs; and in case they have called for explanation or information from the directors,

whether such explanations or information have been given by the directors, and whether they have been satisfactory, and such report shall be read, together with the report of the directors at the ordinary meeting.

Notices.

35. A notice may be served by the company upon a member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

36. Any notice if served by post shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office.

Winding-up.

37. The company shall be woundup voluntarily whenever an extraordinary resolution as defined by *The Companies Act, 1899*, is passed requiring the company to be woundup voluntarily.

Names, addresses, and descriptions of subscribers.

- | | |
|--------------------------------|-----------|
| 1. John Jones, of | merchant. |
| 2. John Smith, of | " |
| 3. Thomas Green, of | " |
| 4. John Thompson, of | " |
| 5. Caleb White, of | " |
| 6. Andrew Brown, of | " |
| 7. Caesar White, of | " |

Dated the 22d day of November, 18..

Witness to the above signatures:
(A. B., Pitt-street, Sydney.)

Form C. Memorandum and articles of association of a company limited by guarantee, and having a capital divided into shares.

Memorandum of association.

1st. The name of the company is "The Royal Hotel Company (Limited)."

2d. The registered office of the company will be situate in Sydney.

3d. The objects for which the company is established are "the providing hotels for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object".

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being woundup during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and the costs, charges, and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding twenty pounds.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, and descriptions of subscribers.

- | | |
|--------------------------------|-----------|
| 1. John Jones, of | merchant. |
| 2. John Smith, of | " |
| 3. Thomas Green, of | " |
| 4. John Thompson, of | " |
| 5. Caleb White, of | " |
| 6. Andrew Brown, of | " |
| 7. Caesar White, of | " |

Dated the 22d day of November, 18..

Witness to the above signatures:
(A. B., Pitt-street, Sydney.)

Articles of association to accompany preceding memorandum of association.

1. The capital of the company shall consist of five hundred thousand pounds divided into five thousand shares of one hundred pounds each.

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, addresses, and descriptions of subscribers.	Number of shares taken by each subscriber.
1. John Jones, of merchant	290
2. John Smith, of "	25
3. Thomas Green, of "	30
4. John Thompson, of "	40
5. Caleb White, of "	15
6. Andrew Brown, of "	5
7. Caesar White, of "	10
Total shares taken	415

Dated this 22d day of November, 18..

Witness to the above signatures:

(A. B., Pitt-street, Sydney.)

Form D. Memorandum and articles of association of an unlimited company having a capital divided into shares.

Memorandum of association.

1st. The name of the company is "The Patent Stereotype Company".

2d. The registered office of the company will be situate in Sydney.

3d. The objects for which the company is established are "the working of a patent method of founding and casting stereotyped plates, of which method John Smith, of London, is the sole patentee".

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association.

Names, addresses, and descriptions of subscribers.

1. John Jones, of merchant.
2. John Smith, of "
3. Thomas Green, of "
4. John Thompson, of "
5. Caleb White, of "
6. Andrew Brown, of "
7. Abel Brown, of "

Dated 22d day of November, 18..

Witness to the above signatures:

(A. B., Pitt-street, Sydney.)

Articles of association to accompany the preceding memorandum of association.

Capital of the company.

The capital of the company is two thousand pounds divided into twenty shares of one hundred pounds each.

Application of Table A.

All the articles of Table A shall be deemed to be incorporated with these articles and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names:

Names, addresses, and descriptions of subscribers.	Number of shares taken by each subscriber.
1. John Jones, of merchant	1
2. John Smith, of "	5
3. Thomas Green, of "	2
4. John Thompson, of "	2
5. Caleb White, of "	3
6. Andrew Brown, of "	4
7. Abel Brown, of "	1
Total shares taken	18

Dated the 22d day of November, 18..

Witness to the above signatures:

(A. B., Pitt-street, Sydney.)

- a) Christian names, addresses, and occupations should be given *in full*.
 b) "Number of shares" means the aggregate, not the distinctive number.
 c) This column should be added up. The total should agree with the number of shares stated in the summary to have been taken up.
 d) The list should include all transfers since the date of the last list, and the date of registration of each transfer should be given, as well as the number of shares transferred. The particulars should be placed opposite the name of the transferor, and not opposite that of the transferee.
 e) Should there have been no transactions under these headings since last list, the word "nil" should be written across each column and initialled.

Fourth Schedule.

This is to certify that a mining company called " no-liability" has been duly registered under the *Companies Act, 1899*, a memorandum for registration pursuant to the said Act having been duly lodged in the office of the registrar of joint stock companies, and published in the *Government Gazette* of the day of , and in the newspaper of the day of [if any other newspaper mention it] and copies of the said *Government Gazette* and newspaper [if a copy of rules has been forwarded, add and also a copy of rules of the company] have been duly forwarded to the said office. The date of registration of the said company is the day of .
 Given under my hand this day of

A. B.,
 Registrar of Joint Stock Companies.

Fifth Schedule.

Memorandum for registration of a no-liability company.
 [Relates to mining companies.]

[Schedules V.—VIII. relate to no-liability mining companies.]

b) No. 47 of 1900. An Act to amend the Companies Act, 1899 (9th November, 1900).

Court empowered to grant relief for non-compliance with § 55 of Act No. 40, 1899, or 37 Vic. No. 19, § 57. 1. Whenever, before or after the commencement of this Act, any shares in the capital of any company under the *Companies Act, 1899*, credited as fully or partly paid up shall have been or may be issued for a consideration other than cash, and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar of Joint Stock Companies in compliance with section fifty-five of the said Act, or in compliance with section fifty-seven of the *Companies Act, 1874*, thereby repealed, the company or any person interested in such shares or any of them may apply to the Supreme Court in its equitable jurisdiction for relief, and the said Court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence¹⁾, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the Registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall in relation to such shares operate as if it had been duly filed with the Registrar aforesaid before the issue of such shares and may include in such relief any shares in respect of which the memorandum of association of such company has been signed by any signatory thereto. 2. Any such application may be made in the manner in which an application to rectify the register of members may be made under section two hundred and thirty-two of the *Companies Act, 1899*, and either before or after an order has been made or an effective resolution has been passed for the winding-up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and notice of any such application shall be served on the company, if the application is not made by the company. 3. Any such order may be made on such terms and

¹⁾ Sic.

conditions as the Court may think fit, and the Court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the Registrar aforesaid, and the order shall in all respects have full effect.

4. Where the Court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, it may in lieu thereof, direct the filing of a memorandum in writing, in a form approved by the Court, specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period it shall in relation to such shares operate as if it were a sufficient contract in writing within the meaning of section fifty-five of the *Companies Act, 1899*, or of section fifty-seven of the *Companies Act, 1874*, as the case may be, and had been duly filed with the Registrar aforesaid before the issue of such shares. The memorandum shall before the filing thereof be stamped with the same amount of stamp duty as would be chargeable upon the requisite contract, unless the contract has been produced to the Registrar duly stamped, or unless the Registrar is otherwise satisfied that the contract was duly stamped. — Notice of application under this Act for leave to file a contract or memorandum must be given to all non-consenting creditors of the company, except creditors for small amounts. See this case for circumstances where leave to file a memorandum in lieu of a contract was given. — *In re Edwards, Dunlop & Co.*, 2 S. R. (N. S. W.) (Eq.) 286; 19 W. N. (N. S. W.) 242.

Jurisdiction cumulative. 2. The jurisdiction by this Act given to the Court is not by implication to curtail or derogate from its jurisdiction to grant relief in any such case under section two hundred and thirty-two of the *Companies Act, 1899*, or otherwise.

Short title and construction. 3. This Act may be cited as the *Companies Act Amendment Act, 1900*, and shall be read with the *Companies Act, 1899*.

c) No. 22 of 1906. An Act to give further Powers to Companies with respect to certain Instruments under which they may be constituted or regulated; to provide for the Registration of Foreign Companies; to facilitate Compromises and Arrangements between certain Companies, Societies, and Associations and their Creditors; to amend the *Companies Act, 1899*; and for other Purposes (11th December, 1906).

Part I. Preliminary.

Short title. 1. This Act may be cited as the *Companies Amendment Act, 1906*, and shall be construed as one with the *Companies Act, 1899*, hereinafter called the Principal Act.

Definitions. 2. [As amended by d. (No. 9 of 1907) § 2.] In the construction and for the purposes of this Act, the following words and terms shall, if not inconsistent with the subject-matter or context, have the respective meanings hereby assigned to them (that is to say): "Company", in Part II. of this Act, means a company registered under Part I. of the *Companies Act, 1899*. "Court" means the Supreme Court in its equitable jurisdiction. "Deed of settlement" means any contract of co-partnership, or other instrument constituting, or regulating a company, not being an Act of Parliament, a Royal Charter, or Letters Patent. — V. f. (No. 1482) 70 (1), 86; T. f. (59 Vic. No. 17) 3; S. A. a. (No. 557) 3, b. (No. 576) 3; Q. l. (59 Vic. No. 2) 2; W. A. a. (56 Vic. No. 8) 3; N. Z. 297.

Part II. Memoranda of Association.

Power for company to alter objects, subject to confirmation by court. 3. A company may by special resolution, subject to the provisions hereinafter contained, and subject to the confirmation of the Court, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company to enable the company: a) To carry on its business more conveniently or efficiently; or b) To attain its objects by new or improved means; or c) To enlarge, restrict, or change the area of its operations; or d) To carry on any business or businesses which, under existing circumstances, may conveniently or advantageously be combined with the business of the company; or e) To enlarge, restrict, or abandon

any of the objects specified in the memorandum of association or deed of settlement. In no case shall any such alteration take effect until confirmed by the Court. — E. § 9 (1, 2); V. f. (No. 1482) 77—81; T. c. (59 Vic. No. 19) 5; S. A. a. (No. 557) 66; Q. g. (55 Vic. No. 10) 4; W. A. a. (56 Vic. No. 8) 68; N. Z. 162. Cp. a. (No. 40 of 1899) § 11, *supra*.

Order of confirmation. 4. A company which has passed a special resolution altering its memorandum of association or deed of settlement may apply to the Court, by petition, for an order confirming any such alterations, and the Court may, on the hearing of the petition, if satisfied: a) That sufficient notice has been given to every holder of debentures or debenture stocks of the company, and any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and b) That every creditor who, in the opinion of the Court, is entitled to object to such alteration, and who has signified his objection in manner directed by the Court, either consents to such alteration or his debt or claim has been discharged, or has determined or has been secured to the satisfaction of the Court, make an order confirming any such alteration, either wholly or in part, on such terms and subject to such conditions as it deems fit, and make such orders as to costs as it deems proper: Provided that the Court may for special reasons dispense with the notice required by this section to be given to holders of debentures or debenture stock, or any person or class of persons or creditors. — E. § 9 (3, 4); V. f. (No. 1482) 77—81; T. c. (59 Vic. No. 19) 5; S. A. a. (No. 557) 66; Q. g. (55 Vic. No. 10) 4; W. A. a. (56 Vic. No. 8) 68; N. Z. 162. — Cp. *In re Commercial Travellers' Association*, 24 W. N. (N. S. W.) 118.

Interests to be considered by, and powers of, Court. 5. The Court shall, in exercising its discretion under this Part of the Act, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of the dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effects: Provided always that it shall not be lawful to expend any part of the capital of the company in such purchase. — See note to § 4, *supra*.

Registration of order and memorandum as ordered. 6. 1. Where any such alteration has been confirmed by the Court, an office copy of the order confirming the alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, shall be delivered to the Registrar of Joint Stock Companies within sixty days from the date of the order; and the Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Part of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but subject to the provisions of this Part of this Act) the memorandum of association or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company. 2. If a company makes default in delivering to the Registrar any document required by this Part of this Act to be delivered to him, the company shall be liable to a penalty not exceeding five pounds for every day during which it is in default. — E. § 9 (6, 7); V. f. (No. 1482) 82, 83; T. c. (59 Vic. No. 19) 6; S. A. a. (No. 557) 67; Q. g. (55 Vic. No. 10) 5; W. A. a. (56 Vic. No. 8) 69; N. Z. 163.

Part III. Foreign Companies.

Registration of foreign companies. Mode of registration. 7. 1. Every company or society formed or incorporated in any country, Colony, or State other than New South Wales and carrying on business in New South Wales shall, within six months from the commencement of this Act, or before commencing to carry on business in New South Wales, register: a) Its name and a copy of its memorandum and articles of association, or any like document; b) A balance sheet containing a statement of its assets and liabilities at a date not more than twelve months prior to the date of such registration; c) The name and place of abode or business of the person appointed by such company or society to carry on the business of such company or society in New South Wales; and d) The situation of the principal office of such company or society in New South Wales. The person so registered shall be deemed to be the agent of such company or society, and shall be called the public officer of the

company or society, and such office shall be the registered office of such company or society for the purposes of this Act. Every company or society which fails to comply with this provision, and any person carrying on in New South Wales the business of any such company or society which has failed to comply with such provision, shall be liable to a penalty not exceeding five pounds for every day during which business shall be carried on. 2. Every such public officer as aforesaid shall be answerable for the doing of all such acts, matters, and things as are required to be done by such company or society by virtue of this Act, and shall, unless he prove some reasonable excuse, be personally liable to all penalties imposed on such company or society for any contravention of any of the provisions of this Act. 3. The registration of the name of such company or society, agent, and office shall be effected in the following manner: The attorney or agent of such company or society shall make and sign a statutory declaration in the prescribed form or to the like effect before a justice, and such declaration when so made and signed shall be filed with the Registrar-General. 4. Such statutory declaration shall be accompanied by a copy of the memorandum of association and articles of association of the company or society, attested by the attorney or agent of such company or society to be a true transcript of the original memorandum of association and articles of association respectively of such company or society, and such memorandum of association and articles of association shall be filed in the office of the Registrar-General, and the same shall be open for inspection at all reasonable times by any person requiring to inspect the same. — E. § 274; V. f. (No. 1482) 70, 71; T. f. (59 Vic. No. 17) 5 (1—5), 9, 10; S. A. a. (No. 557) 196, 197, 201, 202; Q. l. (59 Vic. No. 2) 3—7; W. A. a. (56 Vic. No. 8) 198, 203, 204; N. Z. 298—300. — Cp. notes to a. (No. 40 of 1899) § 80, 83, 243, *supra*. — A foreign company carrying on business in New South Wales may sue in this Colony. — Grosvenor Hotel Co. v. Sale, 9 B. C. (N. S. W.) 26. Such suit may be brought in the name of the person authorised to sue in behalf of the company under the foreign law. — Anderson v. Johnson, Knox (N. S. W.) 1. The incorporation of a foreign company may be proved by the certificate of the officer of the foreign state charged with the registration of companies. — R. v. Hill, 2 L. R. (N. S. W.) 194; Homeward Bound Co. v. McPherson, 17 L. R. (N. S. W.) (Eq.) 281; 7 B. C. (N. S. W.) 30. Or by a copy under the seal of a foreign court, and certified by a judge to be a true copy of the original register. The seal of the foreign court need not be proved. — Bowden Bros. & Co. v. Imperial, etc., Co., 5 S. R. (N. S. W.) 614; 22 W. N. (N. S. W.) 195. A foreign company in course of being wound up elsewhere may be wound up as an unregistered company in order to protect its local assets from individual creditors. — In re Federal Bank of Australia, 3 B. C. (N. S. W.) 80.

[§ 8 is repealed. In its place are substituted the provisions of d. (No. 9 of 1907) § 3, *infra*.]

List of debenture and stock holders. 9. [As amended by d. (No. 9 of 1907) § 4.] Any company registered under this Part shall once at least in every year make a list showing the number, denomination, value, and due date of all debentures, stock, or other securities secured on the property of the company. Such list shall state whether such debentures, stock, or securities are charged on the whole of the assets of the company or on part only, and if so, what part of such assets. — E. § 274; W. A. c. (61 Vic. No. 35) 13.

[§ 10 is repealed. In its place are substituted the provisions of d. (No. 9 of 1907) § 5, *infra*.]

Certificate of registration. 11. A certificate purporting to be under the hand of the Registrar-General (who is hereby required to give such certificate to any person applying for the same on payment of the prescribed fee), and which shall set forth the name of the company or society, and of the agent of and the situation of the principal office of the company or society in New South Wales, shall be prima facie evidence in all courts that such company or society is incorporated, that the person named therein as agent is the agent of such company or society in New South Wales, and that the office of such company or society in New South Wales is situate as therein stated, and that such company or society, agent, and office have been duly registered under the provisions of this Part of this Act, and of the time of registration, and of all particulars mentioned in such certificate. — V. f. (No. 1482) 72; T. f. (59 Vic. No. 17) 13, 15, g. (62 Vic. No. 26) 10, 15, 19; S. A. a. (No. 557) 198, 204; Q. l. (59 Vic. No. 2) 6, 10; W. A. a. (56 Vic. No. 8) 200, 202, 206, b. (60 Vic. No. 2) 4; N. Z. 303, 308.

Removal of registered office. 12. When and so often as any such registered office shall be removed, or any other person shall be substituted for the registered agent of such company or society, the like declaration and notice shall be made

and given as is hereinbefore required with reference to the registration of a company or society, and if the requirements of this section shall not be complied with, such company or society, and any person carrying on the business of such company or society which has failed to comply with such provisions, shall be liable to a penalty not exceeding five pounds for every day during which the business is so carried on. — V. f. (No. 1482) 73; T. f. (59 Vic. No. 17) 12; g. (62 Vic. No. 26) 16; S. A. a. (No. 557) 200; Q. l. (59 Vic. No. 2) 8; W. A. a. (56 Vic. No. 8) 202; N. Z. 302 (2, 5).

Service of notices and process at registered office. 13. All communications and notices may be addressed to such registered office of such company or society, and service of any notice or legal process at such office, or on the agent of the company or society whose name is registered pursuant to this Part, shall be deemed to be service upon the company or society. — E. § 274; V. f. (No. 1482) 74; T. f. (59 Vic. No. 17) 5 (5), 14; g. (62 Vic. No. 26) 17; S. A. a. (No. 557) 203; Q. l. (59 Vic. No. 2) 8, 9; W. A. a. (56 Vic. No. 8) 205; N. Z. 203.

Saving. 14. No company shall be deemed to be carrying on business, within the meaning of this Part, by reason only of its investing its funds or other property in New South Wales. — V. f. (No. 1482) 75.

[§ 14a is added by d. (No. 9 of 1907) § 6, *infra*.]

Part IV. Compromises.

Definition. 15. The word “company” in this Part of this Act means any society, association, or company registered in New South Wales as a building society before the passing of this Act.

Power to Court to stay proceedings and sanction compromise before winding-up. 16. Where no order has been made or resolution passed for the winding-up of a company, and any compromise or arrangement is proposed between such company and the creditors of such company or any class of such creditors, the Court may, in addition to any other of its powers, on the application in a summary way of the company, or of any creditor of the company, restrain further proceedings in any action, suit, petition, or proceeding against the company upon such terms as it may think fit; and may also order that a meeting of such creditors, or class of creditors, shall be summoned in such manner and at such time as the Court may direct, and if a majority in number representing three-fourths in value of such creditors, or class of creditors, present either in person or by proxy or attorney at such meeting, agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the court, be binding upon the company and its members and shareholders, and upon all such creditors or class of creditors, as the case may be.

Court may direct meetings, etc. 17. The Court, on the application of the company or of any creditor or person interested in the company, before sanctioning any arrangement or compromise under this Act, may order such meetings to be summoned and inquiries to be made as it shall think fit, and may alter or vary such arrangement or compromise, and impose such conditions in the carrying out thereof as it shall think just.

Miscellaneous.

[§ 18 amends a. (No. 40 of 1899) § 142, *supra*, and is there incorporated.]

d) No. 9 of 1907. An Act to amend the Companies (Amendment) Act, 1906; and for other Purposes (16th December, 1907).

Short title. 1. This Act shall be construed with the *Companies (Amendment) Act, 1906*, and may be cited as the *Companies (Amendment) Act, 1907*.

[§ 2 amends c. (No. 22 of 1906) § 2, *supra*, and is there incorporated.]

List to be made each year. 3. Section eight of the *Companies (Amendment) Act, 1906*, is repealed, and the following is substituted in its place: 8. Every company registered under this Part having a capital divided into shares shall, in each year, make a list containing the following particulars: a) The names of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary general meeting in the year the first of such ordinary general meetings, is held, are members of such company; b) The

number of shares held by each of such members; c) The amount of the capital of the company, and the number of shares into which it is divided; d) The number of shares taken from the commencement of the company up to the date of the return; e) The amount of calls made on each share; f) The total amount of calls received; g) The total amount of calls unpaid; h) The total amount of shares forfeited. Provided that the Attorney-General may in his discretion, by notification in the Gazette, exempt any such company from making such list, or from setting forth in such list any of the particulars aforesaid, and may in like manner revoke or amend any such exemption.

[§ 4 amends c. (No. 22 of 1906) § 9, *supra*, and is there incorporated.]

Lists and balance-sheet to be filed. Penalty for default in forwarding list or balance-sheet. 5. Section ten of the *Companies (Amendment) Act of 1906* is repealed, and the following sections are inserted in its place: 10. The lists mentioned in sections eight and nine of this Act shall respectively be completed within three months of the general meeting at which a balance-sheet is presented, or where more than one such meeting is held in a year, then within three months of the first of such meetings. Such lists, and the balance-sheet so presented, shall be forwarded to the Registrar-General within the period above fixed for the completion of the said lists, and filed in his office; and the same shall be open for inspection at all reasonable times by any person requiring to inspect the same. Such balance-sheet shall contain a statement of the assets and liabilities of the company. 10a. If any company makes default in completing or forwarding any such list or balance-sheet as aforesaid, such company, and every director, manager, and public officer of such company who knowingly and wilfully authorises or permits such default, shall be liable to a penalty not exceeding five pounds for every day during which such default continues.

Regulations. 6. The following section is inserted next after section fourteen of the *Companies (Amendment) Act, 1906*: 14a. The Governor may make regulations prescribing the forms to be used for the purposes of this Part, and fixing the fees to be paid in respect of the registration of companies thereunder, and in respect of other matters mentioned in Table B of the Second Schedule to the *Companies Act, 1899*, but not exceeding the fees mentioned in that Schedule, and providing for the payment and recovery of such fees, and generally for carrying out the provisions of this Part.

2. Victoria. a) 54 Vic. No. 1074. An Act to consolidate the law relating to Companies (10th July, 1890).¹⁾

Short title, commencement, and division. 1. This Act may be cited as the *Companies Act, 1890*, and shall come into operation on the first day of August, One thousand eight hundred and ninety, and is divided into Parts and Divisions as follows: [Here follows an analysis of the Act.]

Repeal. First Schedule. 2. The Acts mentioned in the first Schedule to this Act, to the extent to which the same are thereby expressed to be repealed, are hereby repealed. Provided that such repeal shall not affect any nomination, appointment, affidavit, call, forfeiture, winding-up order, minute, assignment, registration, transfer, list, rule, regulation, or order made, or any application pending, or any petition presented, or any licence, certificate, security, or notice given, or any summons issued, or any resolution passed, or any agreement, contract, conveyance, mortgage, compromise, or other arrangement deed, or other instrument validated, entered into, commenced, or executed under the said Acts or any of them before the commencement of this Act. — E. § 287; N. S. W. a. (No. 40 of 1899) 3; T. a. (33 Vic. No. 22) 236; S. A. a. (No. 557) 4; W. A. a. (56 Vic. No. 8) 4; N. Z. 327.

Part I. Trading Companies.

Interpretation. 3. In this Part of this Act: "A company limited by guarantee" shall mean a company under this Part of this Act the liability of the members of which is by their memorandum of association limited to such an amount as the members may respectively undertake by such memorandum to contribute to the assets of the company in the event of its being wound up. "A company limited

¹⁾ See the Companies Act, 1910, *infra*.

by shares" shall mean a company under this Part of this Act the liability of the members of which is by their memorandum of association limited to the amount (if any) unpaid on the shares respectively held by them. "An unlimited company" shall mean a company under this Part of this Act formed on the principle of having no limit placed on the liability of its members. "Insurance company" shall include every company that carries on the business of insurance in common with any other business. "Registrar-General" may include both the Registrar-General and any duly appointed Deputy Registrar-General. "The Court" shall mean the Supreme Court. — E. §§ 2, 285. For interpretation of terms in other Acts, see texts. — A company registered under this Part of this Act, though formed for mining purposes is not a "person" or "elective body corporate" within *Mines Act, 1890* (No. 1120), § 49, 50. — *Moe C. M. Co. v. Lithgow*, 20 V. L. R. 20; 15 A. L. T. 222. A company in which all of the shares are owned by a single individual, who is the manager, and who registers the shares in the names of persons who hold for him, is nevertheless distinct from such person. — *Goulburn Valley, etc., Co. v. Bank of N. S. W.*, 25 V. L. R. 702; 22 A. L. T. 36; 6 A. L. R. 216; affirmed, 26 V. L. R. 351; 22 A. L. T. 76; 6 A. L. R. 216.

Division 1. Constitution and incorporation of companies and associations.¹⁾
Memorandum of association.

Prohibition of partnerships exceeding certain number. 4. No company, association, or partnership, consisting of more than ten persons if it be for the purpose of carrying on the business of banking, or consisting of more than twenty persons if it be for the purpose of carrying on any other business that has for its object the acquisition of gain to the company, association, or partnership, or to the individual members thereof, shall be formed after the commencement of this Act unless it is registered as a company under this Part of this Act, or is formed in pursuance of some other Part of this Act, or of some other Act of the Parliament of Victoria or of Letters Patent. — E. § 1; N. S. W. a. (No. 40 of 1899) 4; T. a. (33 Vic. No. 22) 4; S. A. a. (No. 557) 7; Q. e. (27 Vic. No. 4) 3; W. A. a. (56 Vic. No. 8) 7; N. Z. 5. — Where a sale of goods to the defendants as directors and manager of a company was proved, and the defendants pleaded that the company had not been properly registered, and that as a partnership it was illegal under this section because consisting of more than twenty members, it was held that it was not competent for the defendants to prove the illegality, and that they were liable for the price of the goods. — *Masterton v. Blair*, 2 V. R. (L.) 19; 2 A. J. R. 16. A syndicate consisting of more than twenty persons, formed for the purpose of purchasing a large block of land, of sub-dividing it and reselling it in small allotments, is not such a company, association, or partnership. — *Ballantyne v. Raphael*, 15 V. L. R. 538; 11 A. L. T. 34. — **ULTRA VIRES.** — Any transaction which is not expressly or by reasonable implication within the objects of the company, as stated in the memorandum of association construed as a whole in a reasonable way, is *ultra vires*. — *Mountain Homes, etc., Co. v. Marshall*, 17 V. L. R. 545; 13 A. L. T. 39. Such an act can not be ratified except with the consent of all of the shareholders. A majority can not bind a dissentient minority. But the circumstances may be such that all the shareholders will be deemed to have acquiesced. — *In re Beaconsfield Heights Estate Co.*, 22 V. L. R. 97; 17 A. L. T. 245; 2 A. L. R. 35. But *ultra vires* acts of companies constituted by Act of Parliament can not be ratified with the consent of all the shareholders. The public has an interest in not having the directors exceed their powers. — *Lee v. Robertson*, 1 W. & W. (E.) 374, 386. And acquiescence by the shareholders is not acquiescence by the company. — *Creswick Grand Trunk G. M. Co. v. Hassall*, 5 W. W. & a' B. (E.) 49, 83. A rule that if general meetings for the election of directors be not held at the times appointed, the directors shall continue in office indefinitely, and be considered as re-elected, is *ultra vires* (under Act No. 223, § 39). — *Schmidt v. Garden Gully Co.*, 4 A. J. R. 137. A resolution passed at a meeting of shareholders to "write off" part of the paid-up capital account is *ultra vires*. — *In re Provincial & Suburban Bank*, 2 A. L. T. 47. A collusive proceeding to execution upon the property of a company and a sale thereunder to a new company is invalid. — *United Hand-in-Hand, etc., Co. v. National Bank*, 2 V. L. R. (E.) 206, 217, 218. A purchase by a company of its own shares, where the articles of association authorised such purchase, but no express power to that effect was contained in the memorandum of association, is *ultra vires*. — *In re Colonial, etc., Co.*, 19 V. L. R. 381; 15 A. L. T. 67. A power to lend money upon the security of shares, and to do all other things that may be conducive to the attainment of any of its objects does not authorise the purchase of shares in another company on speculation; but where money has been advanced upon the security of shares the company is authorised to complete its security by becoming the registered owner thereof. — *Victorian, etc., Bank v. Australian Financial Agency*, 19 V. L. R. 680; 15 A. L. T. 31. A sale of the assets of a company in consideration, wholly or in part of

¹⁾ For the provisions relating to the incorporation of no-liability trading companies, see f. (No. 1482) § 4—19, *infra*. For certain restrictions on the formation of companies limited by shares, see f. (No. 1482) § 21, *infra*.

the allotment to the company of shares in another company, operating in another colony, though authorised by a majority of the stockholders, is *ultra vires*. — *Manning v. Tewksbury Freehold Gold Dredging Co.*, (1908) V. L. R. 50. For further applications of the general doctrine, and interpretation of particular powers granted, see *Goulburn Valley Butter Factory Co. v. Bank of N. S. W.*, 25 V. L. R. 702; 22 A. L. T. 36; 6 A. L. R. 216; *In re Melbourne Locomotive, etc., Works*, 21 V. L. R. 442; 17 A. L. T. 213; 2 A. L. R. 7; *In re Beaconsfield Heights Estate Co.*, 22 V. L. R. 97; 17 A. L. T. 245; 2 A. L. R. 35; *In re Quartz Hill G. M. Co.*, 27 A. L. T. Supp. 13; 12 A. L. R. (C. N.) 11. But where an act is within the express or implied powers of the company, but the rules of the company prescribe certain preliminaries or conditions to their exercise, the company is bound. The public in dealing with the company need look only to the memorandum, and not to the rules of internal management. — *In re Tyson's Reef Co.*, 3 W. W. & a' B. (L.) 162. But if a person dealing with the company is aware of a violation of such a rule of management he may be precluded from recovering. — *Colonial Bank v. Loch Fyne Co.*, 3 W. W. & a' B. (L.) 168. As to the form of suit by the dissentient shareholders, see *Creswick Grand Trunk G. M. Co. v. Hassall*, 5 W. W. & a' B. (E.) 49, 79; *Nankivell v. Benjamin*, 18 V. L. R. 543.

Mode of forming company. 5. Where any five or more persons are associated for any lawful purpose, if they subscribe their names to a memorandum of association and otherwise comply with the requisitions of this Part of this Act in respect of registration, they may form an incorporated company with or without limited liability. — E. § 2; N. S. W. a. (No. 40 of 1899) 5; T. a. (33 Vic. No. 22) 6; S. A. a. (No. 557) 9; Q. e. (27 Vic. No. 4) 5; W. A. a. (56 Vic. No. 8) 9; N. Z. 13. — See also f. (No. 1482) § 21, *infra*. The memorandum, in order to bind subscribers for shares, must substantially carry out the plan outlined in the prospectus. — *Bowman v. Homan*, 1 W. & W. (L.) 390.

6. = N. S. W. a. (No. 40 of 1899) § 6, except: "or registered" is omitted; "to" inserted before "such amount".

Memorandum of association of a company limited by shares. 7. Where a company limited by shares is formed the memorandum of association shall contain the following things (that is to say): I. The name of the proposed company with the addition of the word "limited" as the last word in such name; II. The objects for which the proposed company is to be established; III. A declaration that the liability of the members is limited; IV. The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount. Subject to the following regulations: I. That no subscriber shall take less than one share; II. That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes. — E. § 3; N. S. W. a. (No. 40 of 1899) 7; T. a. (33 Vic. No. 22) 8; S. A. a. (No. 557) 11, 12; Q. e. (27 Vic. No. 4) 7; W. A. a. (56 Vic. No. 8) 11, 13; N. Z. 15, 18. See f. (No. 1482) § 21, *infra*.

Shares may be divided into shares of smaller amount. 8. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association if authorized so to do by its regulations as originally framed, or as altered by special resolution, as by subdivision of its existing shares, or any of them, to divide its capital or any part thereof into shares of smaller amount than is fixed by its memorandum of association. Provided that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived. — E. § 41; N. S. W. a. (No. 40 of 1899) 51 (1, 2); T. a. (33 Vic. No. 22) 30; S. A. a. (No. 557) 70—72; Q. f. (53 Vic. No. 18) 16; W. A. a. (56 Vic. No. 8) 72—74; N. Z. 38.

Special resolution to be embodied in memorandum of association. 9. The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who knowingly or wilfully authorizes or permits such default shall incur the like penalty. — E. § 41; N. S. W. a. (No. 40 of 1899) 51 (3); T. a. (No. 33, No. 22) 31; S. A. a. (No. 557) 70—72; Q. f. (53 Vic. No. 18) 17; W. A. a. (56 Vic. No. 8) 72—74; N. Z. 39.

Memorandum of association of a company limited by guarantee. 10. Where a company limited by guarantee is formed the memorandum of association shall contain the following things (that is to say): I.—III. = N. S. W. a. (No. 40 of 1899) § 8 (a), (c), (d). — E. § 4; N. S. W. a. (No. 40 of 1899) 8; T. a. (33 Vic. No. 22) 9; Q. e. (27 Vic. No. 4) 8; N. Z. 16.

Memorandum of association of an unlimited company. 11. Where an unlimited company is formed the memorandum of association shall contain the following things (that is to say): I. The name of the proposed company; II. The objects for which the proposed company is to be established. — E. § 5; N. S. W. a. (No. 40 of 1899) 9; T. a. (33 Vic. No. 22) 10; S. A. a. (No. 557) 11 (2); Q. e. (27 Vic. No. 4) 9; W. A. a. (56 Vic. No. 8) 11 (2); N. Z. 17.

12. = N. S. W. a. (No. 40 of 1899) § 10, except: “and there were in such memorandum” is substituted for “and as if there were in the memorandum”; “a covenant” follows “administrators”, instead of “contained”.

Power of certain companies to alter memorandum of association. 13. [As amended by No. 1482, Sched. I, *infra*.] Any company limited by shares, if authorized to do so by its regulations as originally framed or as altered by special resolution in manner hereinafter mentioned, may so far modify the conditions contained in its memorandum of association as to increase its capital by the issue of new shares of such amount as it thinks expedient; or to consolidate and divide its capital into shares of larger amount than its existing shares or to convert its paid-up shares into stock. — E. § 41; N. S. W. a. (No. 40 of 1899) 11; T. a. (33 Vic. No. 22) 12; S. A. a. (No. 557) 14 (2); Q. e. (27 Vic. No. 4) 11; W. A. a. (56 Vic. No. 8) 15; N. Z. 42. Cp. V. f. (No. 1482) § 51, *infra*. — For a case where dissentient shareholders were not bound by an alteration, see *In re Provincial, etc., Bank*, 6 V. L. R. (E.) 145. The power to increase capital by forcing new shares on existing shareholders must be expressed in the clearest language. — *In re Victoria Sugar Co.*, 14 V. L. R. 471.

Articles of association.

Regulations to be prescribed by articles of association. Second Schedule, Table A.

14. The memorandum of association may in the case of a company limited by shares, and shall in the case of a company limited by guarantee or of an unlimited company, be accompanied when registered by articles of association signed by the subscribers to the memorandum of association and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. Such articles shall be expressed in separate paragraphs numbered arithmetically and may adopt all or any of the provisions contained in the Table marked A in the second Schedule hereto. They shall, in the case of a company whether limited by guarantee or unlimited that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and, in the case of a company whether limited by guarantee or unlimited that has not a capital divided into shares, state for the purpose of enabling the Registrar-General to determine the fees payable on registration the number of members with which the company proposes to be registered. In a company limited by guarantee or unlimited and having a capital divided into shares each subscribers shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes. — E. §§ 3, 4, 5, 10, 12; N. S. W. a. (No. 40 of 1899) 12; T. a. (33 Vic. No. 22) 14; S. A. a. (No. 557) 15; Q. e. (27 Vic. No. 4) 13; W. A. a. (56 Vic. No. 8) 16; N. Z. 22. — The articles of association and the regulations thereunder must be in accordance with the terms of the Act. — *Schmidt v. Garden Gully Co.*, 4 A. J. R. 66, 137. — Where under the regulations of a company directors are elected by a resolution the power to rescind resolutions at a subsequent extraordinary general meeting does not include a power to rescind such election. — *Schaw v. Wekey*, 1 V. R. (L.) 205; 1 A. J. R. 161; *Aberfeldie G. M. Co. v. Walters*, 2 V. L. R. (E.) 116.

15. = N. S. W. a. (No. 40 of 1899) § 13, except: “such last-mentioned” is substituted for “the last-mentioned”.

16. = N. S. W. a. (No. 40 of 1899) § 14, except: no division into paragraphs; “and” is inserted before “when registered”, and before “all moneys”; “Part of this” is inserted before “Act”; “such conditions” substituted for “the conditions”. — *Cp. Gillespie & Co. v. Reid*, (1905), V. L. R. 101; 26 A. L. T. 154; 11 A. L. R. 12.

General provisions.

Registration of memorandum of association and articles of association. Third Schedule. Fourth Schedule. 17. The memorandum of association and articles of association (if any) shall be delivered to the Registrar-General who shall retain and register the same. There shall be paid to the Registrar-General by a company having a capital divided into shares in respect of the several matters mentioned in the third Schedule hereto the several fees therein specified; and by a company

not having a capital divided into shares in respect of the several matters mentioned in the fourth Schedule hereto the several fees therein specified, or such smaller fees as the Governor in Council may in either case from time to time direct. — E. § 15, 244; N. S. W. a. (No. 40 of 1899) 15; T. a. (33 Vic. No. 22) 17; S. A. a. (No. 557) 19 (1), 250; Q. e. (27 Vic. No. 4) 16; W. A. a. (56 Vic. No. 8) 20 (1), 250; N. Z. 26 (1). — See also f. (No. 1482) § 82, *infra*. In proof of the incorporation of a company, a *Government Gazette* was put in evidence, purporting to be a certificate that the company had been registered by the subscriber, *Henry Krone, Acting Registrar-General*. *Held*, there had been a full compliance with the requirements of this section as to the certificate being signed by the Registrar-General. — *Union Finance, etc., Co. v. Woolcott*, 15 V. L. R. 504; 11 A. L. T. 64; *Reg. v. Walter*, 5 A. J. R. 25. — The court will assume that the officer has published this notice, and mere absence of proof will not justify the court in saying that the company has not been duly registered and wholly incorporated under the Act. — *In re Hall*, 10 A. L. T. 30.

Effect of registration. 18. Upon the Registration of the memorandum of association and of the articles of association in cases where articles of association are by this Part of this Act or by the desire of the parties required to be registered, the Registrar-General shall notify in the *Government Gazette* that the company is incorporated, and in the case of a limited company that the company is limited; and thereupon the subscribers of the memorandum of association together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum of association capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned. Such notice shall be conclusive evidence that all the requisitions of this Part of this Act in respect of registration have been complied with. — E. § 16; N. S. W. a. (No. 40 of 1899) 16; T. a. (33 Vic. No. 22) 18; S. A. a. (No. 557) 19 (2, 3), 20; Q. e. (27 Vic. No. 4) 17; W. A. a. (56 Vic. No. 8) 20 (2, 3), 21; N. Z. 76 (3—5). Cp. f. (No. 1482) § 52, 164, *infra*. — Where the registration is defective a person who has signed the deed of association is not estopped from showing that the recitals in the deed are erroneous. — *Reeves v. Greene*, 6 W. W. & a' B. (L.) 87. Where a declaration avers that a company is "registered", and such allegation is not traversed, it will be deemed to be admitted. — *Wellington, etc., Co. v. Lambrick*, 1 V. R. (L.) 13; 1 A. J. R. 26. Evidence showing that a company is carrying on business in New South Wales and Victoria, having offices in both colonies, is *prima facie* evidence of incorporation in New South Wales. — *Picturesque Atlas Co. v. Searle*, 18 V. L. R. 633; 14 A. L. T. 155. But see now f. (No. 1482) § 72.

Inspection of documents. 19. Every person may inspect the documents kept by the Registrar-General relating to companies under this Part of this Act, and may require a certificate of the incorporation of any company or a copy or extract of any other document or any part of any other document to be certified by the Registrar-General; and there shall be paid for each such inspection one shilling, and for such certificate of incorporation five shillings, and for each folio of such copy or extract sixpence, or such smaller fees as the Governor in Council may from time to time appoint. — E. § 243; N. S. W. a. (No. 40 of 1899) 166 (c); T. a. (33 Vic. No. 22) 206; S. A. a. (No. 557) 202; Q. e. (27 Vic. No. 4) 172; W. A. a. (56 Vic. No. 8) 204; N. Z. 11.

Copies of memorandum and articles to be given to members. 20. A copy of the memorandum of association having annexed thereto the articles of association (if any) shall be forwarded to every member at his request on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy including such annex as aforesaid. And if any company makes default in forwarding a copy of the memorandum of association and articles of association (if any) to a member in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding one pound. — E. § 18; N. S. W. a. (No. 40 of 1899) 233; T. a. (33 Vic. No. 22) 19; S. A. a. (No. 557) 22; Q. e. (27 Vic. No. 4) 18; W. A. a. (56 Vic. No. 8) 23; N. Z. 25.

Prohibition against identity of names in companies. 21. No company shall be registered under a name identical with that by which a subsisting company is already registered or so nearly resembling the same as in the opinion of the Registrar-General to be calculated to deceive, except where the subsisting company is in course of being dissolved and testifies its consent in such manner as the Registrar-General requires; and if any company through inadvertence or otherwise is without such consent as aforesaid registered by a name identical with that by which a subsisting company is registered or so nearly resembling the same as to be calculated to deceive,

such first-mentioned company may with the sanction of the Registrar-General change its name; and upon such change being made the Registrar-General shall enter the new name on the register in the place of the former name, and shall publish a notice of incorporation altered to meet the circumstances of the case. But no such alteration of name shall affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company; and any legal proceeding may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name. — E. § 8; N. S. W. a. (No. 40 of 1899) 234; T. a. (33 Vic. No. 22) 20; S. A. a. (No. 557) 23; Q. e. (27 Vic. No. 4) 19; W. A. a. (56 Vic. No. 8) 24; N. Z. 27, 28. See also restrictions on names imposed by f. (No. 1482) § 50, 51, and p. (No. 2156) § 2, *infra*.

Power of companies to change name. 22. Any company registered under this Part of this Act with the sanction of a special resolution of the company and with the approval of the Governor in Council may change its name, and upon such change being made the Registrar-General shall enter the new name on the register in the place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case, but no such alteration of name shall affect any rights or obligations of the company or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name. — E. § 8; N. S. W. a. (No. 40 of 1899) 225; T. a. (33 Vic. No. 22) 13; S. A. a. (No. 557) 65; Q. e. (27 Vic. No. 4) 12; W. A. a. (56 Vic. No. 8) 67; N. Z. 160. Cp. f. (No. 1482) § 164.

Division 2. Distribution of capital and liability of members of companies and associations.

Nature of interest in company. 23. The shares or other interest of any member in a company under this Part of this Act shall be personal estate capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate; and each share shall in the case of a company having a capital divided into shares be distinguished by its appropriate number. — E. § 22; N. S. W. a. (No. 40 of 1899) 235; T. a. (33 Vic. No. 22) 22; S. A. a. (No. 557) 24; Q. e. (27 Vic. No. 4) 21; W. A. a. (56 Vic. No. 8) 25; N. Z. 30. — Shares pledged as collateral may be redeemed like other mortgaged property. — *Niemann v. Weller*, 3 W. W. & a' B. (E.) 125. Preferred, deferred and debenture stock and shares in a company do not pass under a bequest of "moneys and securities". — *In the Will of Williamson*, 26 A. L. T. 91; 10 A. L. R. 197.

24. = N. S. W. a. (No. 40 of 1899) § 18. — See § 36, 71, 93, f. (No. 1482) § 58, 104 (3). — Where a transfer was executed, and lodged with the company for registration, but the shares were sold on a condition which was never fulfilled, and at the time that action was brought the transferor was still the registered holder, it was held that the transferor remained liable for calls. — *Essendon Land, etc., Co. v. Upton*, 17 V. L. R. 248.

Transfer by personal representative. 25. Any transfer of the share or other interest of a deceased member of a company under this Part of this Act made by his personal representative shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer. — E. § 29; N. S. W. a. (No. 40 of 1899) 236; T. a. (33 Vic. No. 22) 24; S. A. a. (No. 557) 27; Q. e. (27 Vic. No. 4) 23; W. A. a. (56 Vic. No. 8) 28; N. Z. 32.

Register of members. 26. Every company under this Part of this Act shall cause to be kept in one or more books a register of its members; and there shall be entered therein the following particulars: I. The names, and addresses, and the occupations (if any) of the members of the company; with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member; II. The date at which the name of any person was entered in the register as a member. III. The date at which any person ceased to be a member. Every company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues; and every director or manager who knowingly and wilfully authorizes and permits such contravention shall incur the like penalty. — E. § 25; N. S. W. a. (No. 40 of 1899) 19; T. a. (33 Vic. No. 22) 24; S. A. a. (No. 557) 28; Q. e. (27 Vic. No. 4) 24; W. A. a. (56 Vic. No. 8) 29; N. Z. 100. As to branch registers see f. (No. 1482)

§ 61—69. — A person whose name was entered on the register for the purpose of subsequent transfer by him to others was held to be a member even though, with the knowledge of the company, his name was placed on the register for the mere purpose of fulfilling a formality in the transfer. — *In re Mercantile Bank*, 20 V. L. R. 489; 16 A. L. T. 89, 105.

Annual list of members. 27. Every company under this Part of this Act having a capital divided into shares shall make once at least in every year a list of all persons who on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held are members of the company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars: I. The amount of the capital of the company and the number of shares into which it is divided; II. The number of shares taken from the commencement of the company up to the date of the summary; III. The amount of calls made on each share; IV. The total amount of calls received; V. The total amount of calls unpaid; VI. The total amount of shares forfeited; VII. The names, addresses, and occupations of the persons who have ceased to be members since the last list was made and the number of shares held by each of them. The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section; and a copy shall forthwith be forwarded to the Registrar-General. — E. § 26; N. S. W. a. (No. 40 of 1899) 20; T. a. (33 Vic. No. 22) 26; S. A. a. (No. 557) 29; Q. e. (27 Vic. No. 4) 25; W. A. a. (56 Vic. No. 8) 30; N. Z. 101 (1—2). See also *f.* (No. 1482) § 22, *infra*.

Penalty on company not keeping a proper register. 28. If any company under this Part of this Act having a capital divided into shares makes default in complying with the provisions of this Part of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar-General, such company shall incur a penalty not exceeding five pounds for every day during which such default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits any such default shall incur a like penalty. — E. § 26; N. S. W. a. (No. 40 of 1899) 21; T. a. (33 Vi. No. 22) 27; S. A. a. (No. 557) 30; Q. e. (27 Vic. No. 4) 26; W. A. a. (56 Vic. No. 8) 31; N. Z. 101 (3). — A non-compliance with this section extending over several days does not constitute a separate offence for each day so as to be incapable of being comprised in one summons and one conviction. — *Ex parte Colonial Mutual Life Assurance Co.*, 4 V. L. R. (L.) 287.

29. = N. S. W. a. (No. 40 of 1899) § 22, except: “formed or registered” is omitted; “Registrar-General” is substituted for “Registrar”.

30. = N. S. W. a. (No. 40 of 1899) § 23, except: “formed or registered” is omitted; “Registrar-General” is substituted for “Registrar”, in both places where it occurs.

Entry of trusts on register. 31. No notice of any trust, expressed, implied, or constructive, shall be entered on the register in the case of companies under this Part of this Act, or be receivable by the Registrar-General. — E. § 27; N. S. W. a. (No. 40 of 1899) 237; T. a. (33 Vic. No. 22) 32; S. A. a. (No. 557) 31; Q. e. (27 Vic. No. 4) 29; W. A. a. (56 Vic. No. 8) 32; N. Z. 103. — The *cestui que trust* can not be made liable for calls. — *Melbourne, etc., Syndicate v. Brougham*, 12 V. L. R. 902. But equitable rights in shares may be created, although no transfer is made. — *Dean v. Gillespie*, 8 A. L. T. 140, overruling *Fattorini v. Hill*, 8 A. L. T. 87. But a company registering shares as belonging to a certain person as representative of the estate of a deceased person can not subject such shares to a lien to secure an individual indebtedness of such person to the company. — *McLaughlin v. Bank of Victoria*, 20 V. L. R. 433; 15 A. L. T. 203; 16 A. L. T. 54. As to trustee's right to indemnity, see *In re Mercantile Bank of Australia*, 21 V. L. R. 476; 17 A. L. T. 99; 1 A. L. R. 78.

32. = N. S. W. a. (No. 40 of 1899) § 238, except: “a company” is substituted for “any company registered under this Act”; “the share” is substituted for “the shares”.

Inspection of register. 33. The register of members commencing from the date of the registration of the company shall be kept at the registered office of the company hereinafter mentioned; and, except when closed as hereinafter mentioned, shall during business hours (but subject to such reasonable restrictions as the company in general meeting may impose so that not less than two hours in each day be appointed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling or such less sum as the company may prescribe for each inspection. And every such member

or other person may require a copy of such register or of any part thereof or of such list or summary of members as is hereinbefore mentioned on payment of sixpence for every hundred words required to be copied. If such inspection or copy is refused, the company shall incur for each refusal a penalty not exceeding two pounds and a further penalty not exceeding two pounds for every day during which such refusal continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such refusal shall incur the like penalty; and in addition to the above penalty any judge sitting in chambers may by order compel an immediate inspection of the register. — E. § 30; N. S. W. a. (No. 40 of 1899) 239; T. a. (33 Vic. No. 22) 34; S. A. a. (No. 557) 33; Q. e. (27 Vic. No. 4) 31; W. A. a. (56 Vic. No. 8) 34; N. Z. 104.

Power to close register. 34. Any company under this Part of this Act may, upon giving notice by advertisement in two newspapers published nearest to the registered office of the company, close the register of members for any time or times not exceeding in the whole thirty days in each year. — E. § 31; N. S. W. a. (No. 40 of 1899) 240; T. a. (33 Vic. No. 22) 35; S. A. a. (No. 557) 34; Q. e. (27 Vic. No. 4) 32; W. A. a. (56 Vic. No. 8) 35; N. Z. 105.

Notice of increase of capital and of members to be given to Registrar-General. 35. Notice of any increase beyond the registered capital in the capital of a company having a capital divided into shares, whether such shares have or have not been converted into stock, or of any increase beyond the registered number in the number of members of a company not having a capital divided into shares, shall be given to the Registrar-General, in the case of an increase of capital within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the Registrar-General shall forthwith record the amount of such increase of capital or members. If such notice is not given within the period aforesaid, the company shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty. — E. § 44; N. S. W. a. (No. 40 of 1899) 24; T. a. (33 Vic. No. 22) 36; S. A. a. (No. 557) 75; Q. e. (27 Vic. No. 4) 33; W. A. a. (56 Vic. No. 8) 77; N. Z. 43.

Remedy for improper entry or omission of entry in register. 36. When the name of any person is without sufficient cause entered in or omitted from the register of members of any company under this Part of this Act, or when default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself may by motion in the Supreme Court or by application to a Judge sitting in chambers apply for an order that the register may be certified; and the Court or Judge may either refuse such application, with or without costs to be paid by the applicant, or may (if satisfied of the justice of the case) make an order for the rectification of the register and may direct the company to pay all the costs of such motion or application and any damages the party aggrieved may have sustained. The Court or Judge may in any proceeding under this section decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members or between any members or alleged members and the company; and, generally, may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register, and may direct an issue to be tried in which any question of law may be raised. — E. § 32; N. S. W. a. (No. 40 of 1899) 232 (1—3); T. a. (33 Vic. No. 22) 37; S. A. a. (No. 557) 35; Q. e. (27 Vic. No. 4) 34; W. A. a. (56 Vic. No. 8) 36; N. Z. 106, 107. — See *f.* (No. 1482) § 58, 125, *infra*. Cp. also cases in notes to § 69 and § 93, *infra*. A fraud which was not an inducing cause for the taking of shares is not a ground for ordering removal of name. — *Creswick Grand Trunk Co. v. Rowell*, 2 A. J. R. 35. This section includes as an alleged member a person demanding a transfer of shares. But he should either serve his transferor with notice of the application, or give an adequate excuse for not doing so. — *In re Gippeland S. N. Co.*, 1 V. L. R. (E.) 141. Persons who withdrew their application for shares before it was acted on, and never received notice of allotment or registry, need not take any steps to have their names removed from the register. — *In re Provincial and Suburban Bank*, 7 V. L. R. (E.) 63; 3 A. L. T. 11. As to rights against a promoter fraudulently inducing the purchase of shares, see *Curwen v. Yan Yean Land Co.*, 17 V. L. R. 745; 13 A. L. T. 147; *f.* (No. 1482) § 110, note. The right to

rectification may be lost by laches, especially if third parties have altered their position on the faith of the plaintiff's name appearing on the register. — *Whittlesea Land Co. v. Gutheil*, 18 V. L. R. 557; 14 A. L. T. 48; *Osborne Park, etc., Co. v. Pegg*, 18 V. L. R. 515; *In re Heights of Maribyrnong Estate Co.*, 22 V. L. R. 432; 18 A. L. T. 215; 3 A. L. R. 65. Where under the articles of association the directors have power to decline to register a transfer of shares where the transferor is indebted to the company, no order will be made where it appears that the directors have never been asked to exercise the discretion given them under the articles. — *Ex parte Perchard*, 12 A. L. T. 60. And after the company has gone into liquidation the Court will not exercise the discretion thus vested in the directors. — *In re Chatsworth Estate Co.*, 18 V. L. R. 442; 14 A. L. T. 26. The measure of damages for a wrongful refusal to register a transfer of shares is the value of the shares at the time of the refusal. — *McLaughlin v. Bank of Victoria*, 20 V. L. R. 433; 15 A. L. T. 203; 16 A. L. T. 54. For cases where the Court, having regard to the justice of the case, refused to order a rectification of the register, see *In re Irrigable Estates Co.*, 20 V. L. R. 492; 16 A. L. T. 116; *In re McCracken's City Brewery Co.*, 24 V. L. R. 803; 21 A. L. T. 3; 5 A. L. R. 126. Where a person whose name appears on the register in fact held the shares as trustee, and the trust has determined, he is entitled to have his name removed. — *In re Chatsworth Estate Co.*, 18 V. L. R. 400; 14 A. L. T. 30; *In re Commercial Bank*, 18 A. L. T. 241; 3 A. L. R. 59. Even where the articles of association empower the directors to refuse to register a transfer of shares, the discretion though absolute in its terms is in the nature of a trust, and must not be exercised capriciously or unjustly. — *In re Shaw & Co.*, 21 V. L. R. 599; 17 A. L. T. 228; 2 A. L. R. 22; *In re Australian, etc., Deposit Co.*, (1907), V. L. R. 660. See further as to discretion of directors *In re McCracken's City Brewery Co.*, 24 V. L. R. 803; 21 A. L. T. 3; 5 A. L. R. 126.

Notice to Registrar-General of rectification of register. 37. When any order has been made rectifying the register in the case of a company hereby required to send a list of its members to the Registrar-General, the court shall by its order direct that due notice of such rectification be given to the Registrar-General. — E. § 32; N. S. W. a. (No. 40 of 1899) 232 (4); T. a. (33 Vic. No. 22) 38; S. A. a. (No. 557) 36; Q. e. (27 Vic. No. 4) 35; W. A. a. (56 Vic. No. 8) 37; N. Z. 108.

Register to be evidence. 38. The register of members shall be *prima facie* evidence of all matters by this Part of this Act directed or authorized to be inserted therein. — E. § 33; N. S. W. a. (No. 40 of 1899) 226; T. a. (33 Vic. No. 22) 39; S. A. a. (No. 557) 37; Q. e. (27 Vic. No. 4) 36; W. A. a. (56 Vic. No. 8) 38; N. Z. 109.

Liability of members. 39. Where any company formed under this Part of this Act is wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts of the company and the costs, charges, and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say): I. No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up; II. = N. S. W. a. (No. 40 of 1899) § 33 (b); III. No past member shall be liable to contribute to the assets of the company unless it appears to the court that existing members are unable to satisfy the contributions required to be made by them in pursuance of this Part of this Act; IV. If the company be limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member; V. If the company be limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association; VI. = N. S. W. a. (No. 40 of 1899) § 33 (f), except: "this Part of" is inserted before "this Act"; VII. = N. S. W. a. (No. 40 of 1899) § 33 (g), except: "contributories" is substituted for "contributories". — E. § 123; N. S. W. a. (No. 40 of 1899) 33; T. a. (33 Vic. No. 22) 40; S. A. a. (No. 557) 99; Q. e. (27 Vic. No. 4) 37; W. A. a. (56 Vic. No. 8) 101; N. Z. 66—68. — As to the liability when shares are held in trust, see note to § 13, *supra*. For an application of subsection (VII.) see *Robison Bros. v. Sloss*, 14 A. L. T. 145.

Division 3. Management and administration of companies and associations.

Provisions for protection of creditors.

Registered office of company. Notice of situation of registered office. 40. Every company under this Part of this Act shall have a registered office to which all communications and notices may be addressed. If any company under this Part of this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Notice of the situation of such registered office and of any change therein shall be inserted in the *Government Gazette* and in one newspaper published nearest to the registered office of the company, and shall be given to the Registrar-General and recorded by him. Until such notice is given, the company shall not be deemed to have complied with the provisions of this Part of this Act with respect to having a registered office. — E. § 62; N. S. W. a. (No. 40 of 1899) 227, 231; T. a. (33 Vic. No. 22) 43, 44; S. A. a. (No. 557) 38; Q. e. (27 Vic. No. 4) 38, 39; W. A. a. (56 Vic. No. 8) 39; N. Z. 124, 125.

Publication of name by a limited company. 41. Every limited company under this Part of this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on in a conspicuous position in letters easily legible; and shall have its name engraven in legible characters on its seal; and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company. — E. § 63 (1); N. S. W. a. (No. 40 of 1899) 67; T. a. (33 Vic. No. 22) 45; S. A. a. (No. 557) 40 (1); Q. e. (27 Vic. No. 4) 40; W. A. a. (56 Vic. No. 8) 41 (1); N. Z. 126.

Penalties for non-publication of name. 42. If any limited company under this Part of this Act does not paint or affix and keep painted or affixed its name in manner directed by this Part of this Act it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed: and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty. And if any director, manager, or officer of such company, or any person on its behalf uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, or advertisement, or other official publication of such company, or signs, or authorizes to be signed on behalf of such company any bill of exchange, promissory note, or indorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds; and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company. — E. § 63 (2, 3); N. S. W. a. (No. 40 of 1899) 68; T. a. (33 Vic. No. 22) 46; S. A. a. (No. 557) 40 (2); Q. e. (27 Vic. No. 4) 41; W. A. a. (56 Vic. No. 8) 41 (2); N. Z. 127, 128.

Register of mortgages. 43. Every limited company under this Part of this Act shall keep a register of all mortgages and charges specifically affecting property of the company; and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding fifty pounds. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same and every director and manager of the company authorizing or knowingly and wilfully permitting such refusal shall incur a penalty not exceeding five pounds and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty any Judge sitting in chambers may by order compel an immediate inspection of the register. — E. § 100; N. S. W. a. (No. 40 of 1899) 243; T. a. (33 Vic. No. 22) 47; S. A. a. (No. 557) 41; Q. e. (27 Vic. No. 4) 42; W. A. a. (56 Vic. No. 8) 43; N. Z. 129. See f. (No. 1482) § 53, 54. Cp. *In re Chaffey Bros.*, 21 V. L. R. 727, 2 A. L. R. 74.

[§ 44 relates to statements by banking, insurance, deposit, provident, and benefit companies and societies.]

List of directors to be sent to Registrar-General. 45. Every company under this Part of this Act and not having a capital divided into shares shall keep at

its registered office a register containing the names, and addresses, and the occupations of its directors or managers; and shall send to the Registrar-General a copy of such register, and shall from time to time notify to him any change that takes place in such directors or managers. — E. § 75; N. S. W. a. (No. 40 of 1899) 70; T. a. (33 Vic. No. 22) 49; S. A. a. (No. 557) 43 (1); Q. e. (27 Vic. No. 4) 44; W. A. a. (56 Vic. No. 8) 45 (1); N. Z. 102 (1). Cp. No. 1482, § 166, *infra*.

Penalty on company not keeping register of directors. 46. If any company under this Part of this Act and not having a capital divided into shares makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar-General in compliance with the foregoing rules, or in notifying to the Registrar-General any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of such company who knowingly and wilfully authorizes or permits such default shall incur the like penalty. — E. § 75; N. S. W. a. (No. 40 of 1899) 71; T. a. (33 Vic. No. 22) 50; S. A. a. (No. 557) 43 (2); Q. e. (27 Vic. No. 4) 45; W. A. a. (56 Vic. No. 8) 45 (2); N. Z. 102 (2).

Contracts how made. 47. Contracts on behalf of any company under this Part of this Act may be made, varied, or discharged as follows (that is to say): I. Any contract which if made between private persons would be by law required to be in writing under seal may be made, varied, or discharged in the name and on behalf of the company in writing under the common seal of the company; II. Any contract which if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith may be made, varied, or discharged in the name and on behalf of the company in writing signed by any person acting under the express or implied authority of the company; III. Any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing may be made, varied, or discharged by parol in the name and on behalf of the company by any person acting under the express or implied authority of the company. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors and all other parties thereto, their heirs, executors, or administrators, as the case may be. — E. § 76 N. S. W. a. (No. 40; of 1899) 241; T. a. (33 Vic. No. 22) 60; S. A. a. (No. 557) 44; Q. e. (27 Vic. No. 4) 47; W. A. a. (56 Vic. No. 8) 46; N. Z. 146, 147. For a case under subsection (II.) see *In re Fraser & Co.*, 19 A. L. T. 97; 3 A. L. R. 185.

Promissory notes and bills of exchange. 48. A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company under this Part of this Act, if made, accepted, or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or indorsed by or on behalf or on account of the company by any person acting under the authority of the company. — E. § 77; N. S. W. a. (No. 40 of 1899) 244; T. a. (33 Vic. No. 22) 61; S. A. a. (No. 557) 45; Q. e. (27 Vic. No. 4) 46; W. A. a. (56 Vic. No. 8) 47; N. Z. 148. — The incorporation of the words “value received on account of the company”, nothing further appearing, does not relieve directors who have affixed their individual names from personal liability on a promissory note. — *M'Mullen v. O'Connor*, 5 W. W. & a'B. (L.) 200. Nor the affixing of the company's seal. — *Harriman v. Purches*, 9 V. L. R. (L.) 234; 5 A. L. T. 76. Cp. also *White v. Bank of Victoria*, 8 V. L. R. (M.) 8; 3 A. L. T. 90 (a case of guaranty). But as against a party, not a holder in due course, directors who have signed as individuals, but where the note was taken as binding on the company, may set up this equitable defence. — *Dickins v. Ingram*, 18 V. L. R. 675. As to affixing of stamp, see *Bank of South Australia v. City, etc.*, Bank, 18 V. L. R. 16; 13 A. L. T. 175. See note to V. Bills of Exchange Act, 1890, § 27, *infra*.

Prohibition against carrying on business with less than five members. 49. If any company under this Part of this Act carries on business when the number of its members is less than five for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than five members, shall be severally liable for the payment of the whole debts of the company contracted during such time; and may be sued for the same without the joinder in the action of any other member. — E. § 115; N. S. W. a. (No. 40 of 1899) 245; T. a. (33 Vic. No. 22) 52; S. A. a. (No. 557) 46; Q. e. (27 Vic. No. 4) 47; W. A. a. (56 Vic. No. 8) 48; N. Z. 132. — But even where the number of members is less than five the company has power to pass a resolution for winding-up. — *In re Johnston, Dunster & Co.*, 17 V. L. R. 100.

50. = N. S. W. a. (No. 40 of 1899) § 246, except: "under this Part of" is substituted for "registered under", and "at the least in every six months" for "at least in every year".

51. = N. S. W. a. (No. 40 of 1899) § 72, except: no division into paragraphs; "this Part of" is inserted before "this Act" in the first line; "as" is inserted between "regulations of the company" and "contained"; "in manner hereinafter mentioned" is inserted between "special resolution" and "alter all".

52. = N. S. W. a. (No. 40 of 1899) § 247, except: no division into paragraphs; "this Part of" is inserted before "this Act"; throughout "rules or" is omitted before "regulations"; "such" is inserted between "at any" and "meeting unless a poll is demanded". — E. § 69; N. S. W. a. (No. 40 of 1899) 247; T. a. (33 Vic. No. 22) 56; S. A. a. (No. 557) 3; Q. e. (27 Vic. No. 4) 50; W. A. a. (56 Vic. No. 8) 3; N. Z. 91. — A special resolution carried in the manner provided by this section is valid notwithstanding that the articles of association provide for a different procedure. — *James v. Evening Standard Newspaper Co.*, 21 V. L. R. 399; 17 A. L. T. 158; 1 A. L. R. 143. The declaration of the chairman is conclusive evidence of the count of the votes, but not of the regularity of the meeting. — *In re Fraser & Co.*, 22 V. L. R. 385; 18 A. L. T. 122; 2 A. L. R. 257.

Provision where no regulations as to meetings. 53. In default of any regulations as to voting, every member shall have one vote: and in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the Table marked A in the second Schedule hereto; and in default of any regulations as to the persons to summon meetings, five members may summon the same; and in default of any regulations as to who is to be chairman of such meeting, any person elected by the members present may preside. — E. § 67; N. S. W. a. (No. 40 of 1899) 248; T. a. (33 Vic. No. 22) 57; S. A. a. (No. 557) 49; Q. e. (27 Vic. No. 4) 52; W. A. a. (56 Vic. No. 8) 51; N. Z. 90. — Where the rules of a company provide that no shareholder indebted to the company in respect of calls shall be allowed to vote, the vote of such a member is good, unless objection is made at the time it is tendered. — *Aberfeldie G. M. Co. v. Walters*, 2 V. L. R. (E.) 116. Legal notice of the meeting is sufficient; actual knowledge is not necessary. — *Cushing v. Lady Barkly G. M. Co.*, 9 V. L. R. (E.) 108, 124; 5 A. L. T. 98. Where the articles of association require seven days' notice of every general meeting to be inserted twice in one newspaper, both insertions must take place at least seven days before the meeting. — *Dalrymple v. Prince of Wales, etc., Co.*, 16 A. L. T. 168. As to interpretation of certain provisions in the articles of association relating to method of voting, see *Montgomerie's Brewery Co. v. Spencer*, 20 A. L. T. 260; 5 A. L. R. 112. *Semble*, where vote is taken by show of hands proxies can not be counted. — *James v. Evening Standard Newspaper Co.*, 17 A. L. T. 5.

Registry of special resolutions. 54. When any special resolution is passed by any company under this Part of this Act, a copy thereof shall be printed and forwarded to the Registrar-General and be recorded by him. If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall be liable to a like penalty. — E. § 70; N. S. W. a. (No. 40 of 1899) 249; T. a. (33 Vic. No. 22) 58; S. A. a. (No. 557) 51; Q. e. (27 Vic. No. 4) 53; W. A. a. (56 Vic. No. 8) 53; N. Z. 93. — See f. (No. 1482) § 57, *infra* relating to registry of extraordinary resolutions.

55. = N. S. W. a. (No. 40 of 1899) § 250, except: no division into paragraphs; throughout "or rules" is omitted after "association"; "that" is substituted for "which" before "may be issued", "and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who knowingly and wilfully authorizes or permits such default shall incur the like penalty" is substituted for (3).

Execution of deeds abroad. 56. Any company under this Part of this Act may by instrument in writing under its common seal empower any person either generally or in respect of any specified matters as its attorney to execute deeds on its behalf in any place not situate in Victoria; and every deed signed by such attorney on behalf of the company and under his seal shall be binding on the company, and have the same effect as if it were under the common seal of the company. — E. § 78; N. S. W. a. (No. 40 of 1899) 251; T. a. (33 Vic. No. 22) 61; S. A. a. (No. 557) 53; Q. e. (27 Vic. No. 4) 54; W. A. a. (56 Vic. No. 8) 55; N. Z. 150. Cp. n. (No. 2039) § 2—6, *infra*.

57. = N. S. W. a. (No. 40 of 1899) § 252, except: throughout "in Council" is inserted after "Governor"; "competent" is inserted before "inspectors"; "under this Part of" is substituted for "registered under".

Application for inspection to be supported by evidence. **58.** The Governor in Council before appointing any inspector may require the applicants to satisfy him that they have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same; and to give security for payment of the costs of the inquiry. — E. § 109 (2); N. S. W. a. (No. 40 of 1899) 253; T. a. (33 Vic. No. 22) 63; S. A. a. (No. 557) 55; Q. e. (27 Vic. No. 4) 57; W. A. a. (56 Vic. No. 8) 57; N. Z. 141, 142.

59. = N. S. W. a. (No. 40 of 1899) § 254, except: no division into paragraphs; "it shall be the duty" is inserted before "all officers"; "to produce" is substituted for "shall produce", and "every inspector" for "any inspector".

Result of examination, how dealt with. **60.** Upon the conclusion of the examination the inspectors shall report to the Governor in Council in writing or in print according to his direction their opinion; and a copy thereof shall be sent to the registered office of the company, and a further copy shall at the request of the members upon whose application the inspection was made be delivered to them or any one or more of them. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Governor in Council shall direct the same to be paid out of the assets of the company which he is hereby authorized to do. — E. § 109 (6, 7); N. S. W. a. (No. 40 of 1899) 255; T. a. (33 Vic. No. 22) 65; S. A. a. (No. 557) 57; Q. e. (27 Vic. No. 4) 59; W. A. a. (56 Vic. No. 8) 59; N. Z. 143 (4—7).

61. = N. S. W. a. (No. 40 of 1899) § 256, except: no division into paragraphs; "under this Part of" is substituted for "registered under"; "and" is omitted before "the inspectors"; "with this exception that instead" is substituted for "but instead"; "and" is omitted before "the officers"; "such inspectors" is substituted for "such inspector"; throughout "Governor in Council" is substituted for "Governor".

62. = N. S. W. a. (No. 40 of 1899) § 257, except: "this Part of" is inserted before "this Act".

Notices and legal proceedings.

Service of notices on company. **63.** Any summons notice order or other document requiring to be served upon the company may be served by leaving the same or sending it through the post in a prepaid letter addressed to the company at their registered office. — E. § 116; N. S. W. a. (No. 40 of 1899) 228; T. a. (33 Vic. No. 22) 68; S. A. a. (No. 557) 203, 240; Q. e. (27 Vic. No. 4) 62; W. A. a. (56 Vic. No. 8) 205, 240; N. Z. 151.

Rules as to notices by letter. **64.** Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed and that it was put as a prepaid letter into the post office. — N. S. W. a. (No. 40 of 1899) 229; T. a. (33 Vic. No. 22) 69; S. A. a. (No. 557) 241; Q. e. (27 Vic. No. 4) 63; W. A. a. (56 Vic. No. 8) 241; N. Z. 152.

Authentication of notices of company. **65.** Any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorized officer of the company, and need not be under the common seal of the company; and the same may be in writing, or in print, or partly in writing and partly in print. — E. § 117; N. S. W. a. (No. 40 of 1899) 230; T. a. (33 Vic. No. 22) 70; S. A. a. (No. 557) 242; Q. e. (27 Vic. No. 4) 64; W. A. a. (56 Vic. No. 8) 242; N. Z. 153.

Application of penalties. **66.** The whole or any part of any penalty imposed under this Part of this Act may be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered.

67. = N. S. W. a. (No. 40 of 1899) § 260, except: no division into paragraphs; "under this Part of this Act" is substituted for "registered under this Act"; "and" is inserted before "any such minute", before "until the contrary", and before "all appointments"; "and" is substituted for "or" before "proceedings had", and before "liquidators shall be valid". — E. §§ 71, 74, 149 (10); N. S. W. a. (No. 40 of 1899) 260; T. a. (33 Vic. No. 22) 73; S. A. a. (No. 557) 60; Q. e. (27 Vic. No. 4) 67; W. A. a. (56 Vic.

No. 8) 62; N. Z. 154. Otherwise if the directors act after their term of office, according to statute, has expired. — *Barfold, etc., Co. v. Klingender*, 6 W. W. & a'B. (L.) 231; N. C. 25. Minutes of meeting entered in a scrap-book used for roughly drafting such minutes before entering them in the regular minute-book, signed by the chairman, are evidence under this section. — *Legal and General, etc., Co. v. Gill*, 4 V. L. R. (L.) 204. This section, so far as regards the appointment of directors, means that the burden of proof of the invalidity of the appointment rests upon the person who impeaches it. — *Buzolich Paint Co. v. Cornwell*, 11 V. L. R. 371; 7 A. L. T. 138. As to presumptive validity of acts done at a meeting of which no adequate notice was given, see *Federal Mutual, etc., Insurance Co. v. Donaghy*, 14 V. L. R. 857; 10 A. L. T. 126. Only such things as are said or done by the directors in their official capacity should be incorporated in the minutes. A record that a director was present is part of the "proceedings". — *Reg. v. Staples*, 19 V. L. R. 47; 14 A. L. T. 220. For a case where the appointment of directors was deemed to be validated under this section, see *Essendon Land, etc., Co. v. Kilgour*, 24 V. L. R. 136; 20 A. L. T. 5; 4 A. L. R. 130. The validity given by this section extends to all transactions whether between the company and strangers or between the company and its members. The invalidity of the appointment of the directors, etc., must be proved in legal proceedings. — *In re Fraser & Co.*, 22 V. L. R. 385; 18 A. L. T. 122; 2 A. L. R. 257. See also *Mercantile Bank of Australia v. Dinwoodie*, 28 V. L. R. 491; 24 A. L. T. 103; 8 A. L. R. 250. Section 67 applies also to defects in the meeting as to quorum. — *McLean Bros. & Rigg v. Grice*, 4 C. L. R. 835; reversing *McLean Bros. & Rigg v. Grice*, (1906), V. L. R. 610; 28 A. L. T. 14; 12 A. L. R. 324.

68. = N. S. W. a. (No. 40 of 1899) § 259, except: "or no-liability company" is omitted; "legal proceeding" is substituted for "legal proceedings"; "if he have reason" is substituted for "if it appears that there is reason". — E. § 278; N. S. W. a. (No. 40 of 1899) 259; T. a. (33 Vic. No. 22) 74; S. A. a. (No. 557) 62; Q. e. (27 Vic. No. 4) 68; W. A. a. (56 Vic. No. 8) 64; N. Z. 155. — This section applies to companies in the course of voluntary liquidation appearing as plaintiffs. — *Victoria Mortgage, etc., Bank v. Australian Financial Agency*, 18 V. L. R. 754; 14 A. L. T. 180.

69. = N. S. W. a. (No. 40 of 1899) § 73, except: "hath accrued" is substituted for "has accrued", and "brought by the company" for "brought by a company".

Alteration of forms.

[§ 70 relates to the power of the Governor in Council to alter forms contained in the Schedules.]

Division 4. Winding-up of companies and associations under this Part.¹⁾

Preliminary.

71. = N. S. W. a. (No. 40 of 1899) § 79 (1), except: "formed or registered" is omitted before "under"; "persons" is substituted for "proceedings" before "include". — See notes to § 24, 36, *supra*, and § 93, *infra*. — A person may be a member of a company without having complied with all the formalities. Where he has been treated as a member the circumstances may be such that both he and the company will be estopped from denying that he is a shareholder. — *In re Switchback Railway*, 16 V. L. R. 339; 11 A. L. T. 191. Or there may have been acquiescence with knowledge, although there was no original contract. — *Essendon Land, etc., Association v. Kilgour*, 24 V. L. R. 136; 19 A. L. T. 164; 4 A. L. R. 1. See further as to estoppel on the question as to whether a person is or is not a member *In re City of Melbourne Bank*, 22 V. L. R. 243; 17 A. L. T. 318; 2 A. L. R. 191; *In re City & County Property Bank*, 22 V. L. R. 235; 18 A. L. T. 86; 2 A. L. R. (C. N.) 322. See also *In re Australian Producers & Traders*, (1906), V. L. R. 511; 28 A. L. T. 80; 12 A. L. R. 445.

Nature of liability of contributory. 72. The liability of any person to contribute to the assets of a company under this Part of this Act in the event of the same being wound up shall be deemed to create a specialty debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in case of the insolvency of any contributory to prove against his estate the estimated value of his liabilities to future calls as well as calls already made. — E. §§ 124, 263, 268; N. S. W. a. (No. 40 of 1899) 80; T. a. (33 Vic. No. 22) 107; S. A. a. (No. 557) 101, 190; Q. e. (27 Vic. No. 4) 74; W. A. a. (56 Vic. No. 8) 103, 192; N. Z. 174.

Contributories in case of death. 73. Where any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory; and such personal representatives, heirs, and devisees

¹⁾ See further as to winding-up: b. (No. 1269) § 2—6; e. (No. 1442) § 2, 3; f. (No. 1482) § 121—154; m. (No. 1886) § 6.

shall be deemed to be contributories accordingly. — See note to N. S. W. a. (No. 40 of 1899) § 81. — Upon the death of a joint tenant of shares the liability for calls accruing subsequently devolves upon the survivor. — *National Trustees, etc., Co. v. Walsh*, 21 V. L. R. 75; 17 A. L. T. 75; 1 A. L. R. 60; *Mercantile Bank v. Dinwoodie*, 28 V. L. R. 21.

74. = N. S. W. a. (No. 40 of 1899) § 82, except: the beginning word is “where” instead of “if”; “or person deemed to be a contributory” is omitted before “becomes”; “his assignees” is substituted for “his assignee or trustee”; “insolvent” is in all cases substituted for “bankrupt”; “contributories” is substituted for “contributory” before “accordingly”.

75. = N. S. W. a. (No. 40 of 1899) § 83, except: the beginning word is “where” instead of “if”; “or female deemed to be a contributory” is omitted before “marries”. — The coverture must be pleaded. — *In re Australian Sub-Marine Working Co.*, 4 W. & a’B. (E.) 124.

Winding-up by Court.

Circumstances under which company may be wound up by court. 76. A company under this Part of this Act may be wound up by the court under the following circumstances (that is to say): I. When the company has passed a special resolution requiring the company to be wound up by the court; II. When the company does not commence its business within a year from its incorporation or suspends its business for the space of a whole year; III. When the members are reduced in number to less than five; IV. When the company is unable to pay its debts; V. When the court is of opinion that it is just and equitable that the company should be wound up. — E. § 129, 268; N. S. W. a. (No. 40 of 1899) 84; T. a. (33 Vic. No. 22) 111; S. A. a. (No. 557) 105; Q. e. (27 Vic. No. 4) 78; W. A. a. (56 Vic. No. 8) 107; N. Z. 87 (9). — See also f. (No. 1482) § 122, 126. The Court, having regard to the wishes of the creditors (see § 86, *infra*), may order the compulsory winding-up of a company, even though the shareholders have passed a resolution for the voluntary winding-up. — *In re Cooperative, etc., Association*, 8 V. L. R. (E.) 227. The fact that the company is carrying on business at a loss, that it is largely indebted, etc., held, under the circumstances, not a sufficient ground for a compulsory order. — *In re Buzolich Paint Co.*, 10 V. L. R. (E.) 276, 281, 282; 6 A. L. T. 130. A creditor, though he shows that he comes within the terms of the Act is not entitled as of right to a winding-up order. — *In re Polynesia Co.*, 4 A. J. R. 47. A petition under this section is to be accepted without verification, and is afterwards to be verified by an affidavit made and filed within four days. — *In re Malsbury, etc., Co.*, 3 W. W. & a’B. (E.) 81. Where the petition is based on subsection IV, but there is a *bona fide* dispute as to the debt, the petition will be dismissed. — *In re Alderney Dairy Co.*, 11 V. L. R. 628; 7 A. L. T. 77. Making calls and incurring debts is not commencing business within the meaning of subsection II. — *In re The Shelbourne Cheese Co.*, 14 V. L. R. 294. The Court in deciding on the question of a compulsory winding-up will have special regard to the wishes of creditors. — *In re Federal Land Co.*, 15 V. L. R. 135, 153; 10 A. L. T. 221. Subsections (I.) and (II.) only define certain facts which, when proved, at once establish an inability to pay. The subsections in no way limit the generality of subsection (III.). — *In re Premier, etc., Association*, 16 V. L. R. 21; 11 A. L. T. 139. The Court has jurisdiction to make an order winding-up a foreign company registered in Victoria. — *In re Egerton & Gordon C. G. M. Co.*, (1908), V. L. R. 92.

77. = N. S. W. a. (No. 40 of 1899) § 86 (a—c), except: the introductory paragraph reads as follows: “a company under this Part of this Act shall be deemed unable to pay its debts”; throughout the beginning of the subsections is “when” instead of “whenever”; in (a) “at law or in equity” is omitted.

Application for winding up to be made by petition. 78. Any application to the court for the winding-up of a company under this Part of this Act shall be by petition presented either by the company or by one or more creditor or creditors, contributory or contributories of the company, or by all or any of the above parties together or separately. And every order which may be made upon any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory. And any Judge of the Supreme court may do in chambers any act which the court is by this Part of this Act authorized to do, and may refer to the Chief Clerk any matter arising under this Part of this Act. — E. § 137; N. S. W. a. (No. 40 of 1899) 89; T. a. (33 Vic. No. 22) 114; S. A. a. (No. 557) 107; Q. e. (27 Vic. No. 4) 81; W. A. a. (56 Vic. No. 8) 109; N. Z. 179. — Where two petitions are presented priority will be given to the one first presented, irrespective of the order in which they appeared in the newspaper advertisements. But both petitions may be heard. Only the costs of the first petition will be allowed. — *In re Provincial and Suburban Bank*, 5 V. L. R. (E.) 159, 174, 177, 179; 1 A. L. T. 15. A company may present a petition for the winding-up of another company. — *In re Federal Land Co.*, 15 V. L. R. 135; 10 A. L. T. 221; *In re New Imperial*

T. M. Co., 12 V. L. R. 775. The directors of a company have no power to petition for its winding-up. — In re Standard Bank of Australia, 24 V. L. R. 304; 4 A. L. R. 287.

79. = N. S. W. a. (No. 40 of 1899) § 91, except: "of a company" is inserted after "winding up". — Cp. In re City of Melbourne Bank, 17 A. L. T. 296, 2 A. L. R. 81.

Court may grant injunction. 80. The court may, at any time after the presentation of a petition for winding-up a company under this Part of this Act and before making an order for winding-up the company upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company upon such terms as the court thinks fit, and may also at any time after the presentation of such petition and before the first nomination of liquidators nominate provisionally an official liquidator of the estate and effects of the company. — See note to N. S. W. a. (No. 40 of 1899) § 92.

81. = N. S. W. a. (No. 40 of 1899) § 93, except: "or" is omitted before "may adjourn".

Actions and suits to be stayed after order for winding-up. 82. When an order has been made for winding-up a company under this Part of this Act no suit, action, or other proceeding shall be continued or commenced against the company, except with the leave of the Court and subject to such terms as the Court may impose. — See note to N. S. W. a. (No. 40 of 1899) § 94. — As to practice, see In re Melbourne, etc., Co., 1 W. W. & a'B. (E.) 166; De Alba v. Freehold Investment and Banking Co., 16 A. L. T. 165; In re Standard Bank, 5 A. L. R. (C. N.) 5.

83. = N. S. W. a. (No. 40 of 1899) § 96, except: "under this Part of this Act" is omitted after "made", and inserted after "company"; "Registrar-General" is substituted for "Registrar".

84. = N. S. W. a. (No. 40 of 1899) § 97, except: "by motion" is inserted after "application"; "the company" is substituted for "such company".

85. = N. S. W. a. (No. 40 of 1899) § 99, except: "specialty debt" is substituted for "debt of the nature of a specialty"; "sum" is substituted for "sums".

86. = N. S. W. a. (No. 40 of 1899) § 100, except: no division into paragraphs; "shall" is substituted for "is to".

[§ 87 is repealed.]

Official liquidators.

Appointment of official liquidators. 88. For the purpose of conducting the proceedings in winding-up a company and assisting the Court therein the Governor in Council may from time to time appoint such and so many persons as he thinks fit to be official liquidators, and may require of such persons such security as he thinks fit, and may remove the same, and in such case or in the case of the death or resignation of any liquidator, the Governor in Council may appoint another in his stead; and the Court may nominate in due course of rotation one or more of such persons either provisionally or otherwise to be the official liquidator of the estate and effects of any company, and may assign to him such salary or remuneration by percentage or otherwise as it thinks fit. If more persons than one are nominated, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons; and may distribute the remuneration amongst them in such proportion as it sees fit. If no official liquidator be nominated or during any vacancy therein, all the property of the company shall be deemed to be in the custody of the Court. — E. § 149; N. S. W. a. (No. 40 of 1899) 102; T. a. (33 Vic. No. 22) 126; S. A. a. (No. 557) 115 (5, 6); Q. e. (27 Vic. No. 4) 92; W. A. a. (56 Vic. No. 8) 115 (5, 6); N. Z. 188, 191. — See f. (No. 1482) § 127, 129, 130 *infra*. *Semble*, on an order for a voluntary winding-up under supervision of the court, the court may remove liquidators appointed by the shareholders, and appoint others selected by the creditors, disregarding the official liquidators appointed under this section. — In re Provincial and Suburban Bank, 5 V. L. R. (E.) 159, 178. The remuneration, under f. (No. 1482) § 130 (4), *infra*, is limited to £10. — In re Standard Bank of Australia, 25 V. L. R. 44; 5 A. L. R. (C. N.) 83. See further as to practice under § 88, In re Premier Permanent Bldg., etc., Association, 25 A. L. T. 8; 9 A. L. R. 115.

89. = N. S. W. a. (No. 40 of 1899) § 103, except: no division into paragraphs; in (2) "he" is substituted for "the official liquidator"; "which the company" is substituted for "which such company"; "of the company" is inserted after "winding-up".

90. = N. W. S. a. (No. 40 of 1899) § 104, except: in introductory paragraph "do the following things" is inserted after "the court to"; each subsection begins

with "to", but the subsections are not lettered; in (a) "civil or criminal is added after "proceeding"; in (c) "choses in action" is substituted for "things in action"; in (d) "agreements of reference or submissions to arbitrations" is omitted; in (e) "insolvency or sequestration" is substituted for "bankruptcy or insolvency" in both instances, and "to take" for "take"; "bankrupt or" is omitted; in (f) "also to raise upon" is substituted for "and raise upon", and "sum or sums" for "sums" before "of money"; "on behalf of the company" is substituted for "on behalf of such company"; in (g) "to do in his official name any other act that" is substituted for "do in his official name such other act as"; "which act" is inserted before "can not be conveniently done". — E. § 151; N. S. W. a. (No. 40 of 1899) 104; T. a. (33 Vic. No. 22) 128; S. A. a. (No. 557) 117; Q. e. (27 Vic. No. 4) 94; W. A. a. (56 Vic. No. 8) 120; N. Z. 195. — The Court may sanction a lease. — *In re Premier, etc., Society*, 16 V. L. R. 643; 12 A. L. T. 113. See also *Jones v. Davies Franklin Cycle Co.*, 27 V. L. R. 649; 8 A. L. R. (C. N.) 17.

91. = N. S. W. a. (No. 40 of 1899) § 105.

[§ 92 is repealed.]

93. = N. S. W. a. (No. 40 of 1899) § 107. — E. § 163 (1); N. S. W. a. (No. 40 of 1899) 107; T. a. (33 Vic. No. 22) 131; S. A. a. (No. 557) 119; Q. e. (27 Vic. No. 4) 97; W. A. a. (56 Vic. No. 8) 122; N. Z. 197. — A shareholder seeking to have his name removed from the list of contributories on the ground that he was induced by fraud to take shares must show that before the commencement of the winding-up he had repudiated the contract, and had taken proceedings to have his name removed from the register. Mere repudiation is not sufficient. — *In re Gambrinus, etc., Brewery Co.*, 12 V. L. R. 446; *Ex parte Burdekin*, 11 A. L. T. 96; *Whittlesea Land Co. v. Gutheil*, 18 V. L. R. 557; 14 A. L. T. 48.

94. = N. S. W. a. (No. 40 of 1899) § 108.

95. = N. S. W. a. (No. 40 of 1899) § 109, except: "or any" is omitted before "trustee"; "or into the hands of" is inserted after "as the Court directs to".

96. = N. S. W. a. (No. 40 of 1899) § 110, except: no division into paragraphs; in (1) "winding-up the company" is substituted for "winding-up a company", "directing payments" for "directing payment", and "estate of the person whom he represents" for "such estate"; in (2) "and it may in making such order when the company" is substituted for "in making such order when a company"; in (3) the beginning words are "provided that where" instead of the word "when", "any company" is substituted for "a company" and "call" for "calls". — E. § 165; N. S. W. a. (No. 40 of 1899) 110; T. a. (33 Vic. No. 22) 134; S. A. a. (No. 557) 122; Q. e. (27 Vic. No. 4) 100; W. A. a. (56 Vic. No. 8) 125; N. Z. 199 (b). — On overdue calls the Court may order the payment of interest at a rate different from that fixed by the articles of association. — *In re Spottiswoode Estate Co.*, 21 V. L. R. 334; 17 A. L. T. 27; 1 A. L. R. 26.

97. = N. S. W. a. (No. 40 of 1899) § 111, except: no division into paragraphs; "and the costs, charges, and expenses of winding it up, and" is substituted for "to satisfy the costs, charges, and expenses of winding-up, and"; in (2) "and it may" is substituted for "the Court may".

98. = N. S. W. a. (No. 40 of 1899) § 112, except: "some bank named in such order, and appointed by the Governor in Council to be a bank for receiving such deposits" is substituted for "a bank to be named by the Court".

99. = N. S. W. a. (No. 40 of 1899) § 113, except: "so" is omitted before "paid and delivered"; "any bank in the event of a company being wound up by the Court" is substituted for "such bank", and "as the Court directs" for "as the Court may direct".

100. = N. S. W. a. (No. 40 of 1899) § 114.

101. = N. S. W. a. (No. 40 of 1899) § 115, except: "that" is inserted before "all other pertinent matters"; "as" is omitted before "against all persons"; at the end of the section the following is added: "with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made".

102. = N. S. W. a. (No. 40 of 1899) § 116, except: "being wound up" is omitted. — E. § 169; N. S. W. a. (No. 40 of 1899) 116; T. a. (33 Vic. No. 22) 140; S. A. a. (No. 557) 127; Q. e. (27 Vic. No. 4) 106; W. A. a. (56 Vic. No. 8) 130; N. Z. 204. — Where justice requires a creditor may be allowed to prove even after the time fixed by the Court has elapsed. — *Macredy v. Drew*, 17 A. L. T. 10.

103. = N. S. W. a. (No. 40 of 1899) § 117.

104. = N. S. W. a. (No. 40 of 1899) § 118, except: "such order as to the priority and" is substituted for "an order as to the"; "being wound up" is omitted.

— E. § 171; N. S. W. a. (No. 40 of 1899, 118; T. a. (33 Vic. No. 22) 142; Q. e. (27 Vic. No. 4) 108; W. A. a. (56 Vic. No. 8) 163; S. A. a. (No. 57) 160; N. Z. 206. — See *In re People's Daily, etc., Co.*, (1907), V. L. R. 666.

105. = N. S. W. a. (No. 40 of 1899) § 119, except: throughout “the company” is substituted for “a company” or “such company”.

106. = N. S. W. a. (No. 40 of 1899) § 120, except: “Registrar-General” is substituted for “Registrar”.

107. = N. S. W. (No. 40 of 1899) § 121, except: “Registrar-General” is substituted for “Registrar”; “company being wound up” is substituted for “winding-up”.

108. = N. S. W. a. (No. 40 of 1899) § 122, except: “a company” is inserted after “winding-up”; “within the meaning of any Act now or hereafter in force relating to the effect of a *lis pendens* upon purchasers or mortgagees” is added at the end of the section.

109. = N. S. W. a. (No. 40 of 1899) § 123, except: no division into paragraphs; in (1) “any” is omitted between “company or” and “person”; “the Court” is inserted before “may require”; in (2) “and” is inserted before “if any person”; in (3) “nevertheless” is inserted before “in cases where”, and “or” between “deeds” and “writings”. — E. § 184; N. S. W. a. (No. 40 of 1899) 132; T. a. (33 Vic. No. 22) 158; S. A. a. (No. 557) 150; Q. e. (27 Vic. No. 4) 121; W. A. a. (56 Vic. No. 8) 139; N. Z. 222. — The persons summoned must be those whom the Court deems capable of giving information. The Court can not delegate this power to a liquidator nor authorise a liquidator to summon whom he pleases. The witnesses may be examined regarding names on the share register, and how such entries were made. Where a liquidator applies for an order under this section, the application may be *ex parte*, and no affidavit is necessary. — *In re Broken Hill, etc., Smelting Co.*, 19 V. L. R. 111; 14 A. L. T. 261.

110. = N. S. W. a. (No. 40 of 1899) § 124, except: “by word of mouth” is substituted for “orally”.

111. = N. S. W. a. (No. 40 of 1899) § 125, except: “to such company” is inserted after “contributory”; “Victoria” is substituted for “New South Wales”.

112. = N. S. W. a. (No. 40 of 1899) § 126, except: “either at law or in equity” is omitted.

Special commissioner for receiving evidence. 113. The judges of Courts of Insolvency and the judges of the County Courts and of the Courts of Mines shall be commissioners for the purpose of taking evidence under this Part of this Act; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses which he might lawfully exercise as a judge of a Court of Insolvency or judge of a County Court or Court of Mines, have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses and allowing costs and charges and expenses to witnesses as the court which made the order for winding up the company has; and the examination so taken shall be returned or reported to such last-mentioned court in such manner as it directs. — See f. (No. 1482) § 123, *infra*. — The Court may order the examination of witnesses to be public, subject to the discretion of the commissioner. — *In re City of Melbourne Bank*, 2 A. L. R. 65.

Voluntary winding-up of company.

Circumstances under which company may be wound up voluntarily. 114. A company under this Part of this Act may be wound up voluntarily: I. When the period (if any) fixed for the duration of the company by the articles of association expires; or when the event (if any) occurs upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; II. When the company has passed a special resolution requiring the company to be wound up voluntarily; III. When the company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same. — E. § 182; N. S. W. a. (No. 40 of 1899) 130; T. a. (33 Vic. No. 22) 156; S. A. a. (No. 557) 134; Q. e. (27 Vic. No. 4) 119; W. A. a. (56 Vic. No. 8) 137; N. Z. 220. — For a case under subsection (III.), decided under the Act of 1864, see *In re Household Cooperative Supply Co.*, 11 V. L. R. 295; 6 A. L. T. 247. For a case under subsection (III.) of the present Act, see *Jean Biencourt & Co. v. Milnes*, 15 A. L. T. 237. The reso-

lution to wind up voluntarily is not invalid on the ground that it also provides for the appointment of named liquidators. — *James v. Evening Standard Newspaper Co.*, 21 V. L. R. 399; 17 A. L. T. 5. Nor is an extraordinary resolution passed in compliance with subsection (III.) invalid because described and registered as a special resolution. — *Mercantile Bank v. Dinwoodie*, 28 V. L. R. 491; 24 A. L. T. 103; 8 A. L. R. 250.

Meaning of extraordinary resolution. 115. For the purposes of this Part of this Act any resolution shall be deemed to be extraordinary which is passed in such a manner as would if it had been confirmed by a subsequent meeting have constituted a special resolution as hereinbefore defined. — See note to preceding section.

116. = N. S. W. a. (No. 40 of 1899) § 131.

117. = N. S. W. a. (No. 40 of 1899) § 132, except: no division into paragraphs; in (1) "when" is substituted for "whenever"; in (2) "and" is inserted before "all transfers"; in (3) "but its corporate state" is substituted for "the corporate state", and "of such company" is omitted after "powers"; "its corporate powers" is substituted for "the corporate powers"; "that" is inserted after "notwithstanding". — E. § 184; T. a. (33 Vic. No. 22) 147; S. A. a. (No. 557) 156 (1—3) Q. e. (27 Vic. No. 4) 112; W. A. a. (56 Vic. No. 8) 159 (1—3); N. Z. 210. — For an application of this section see *In re Buzolich Paint Co.*, 12 V. L. R. 215; 7 A. L. T. 138.

118. = N. S. W. a. (No. 40 of 1899) § 133, except: "*Government Gazette*" is substituted for "*Gazette*". — E. § 185; N. S. W. a. (No. 40 of 1899) 133; T. a. (33 Vic. No. 22) 159; S. A. a. (No. 557) 136; Q. e. (27 Vic. No. 4) 122; W. A. a. (56 Vic. No. 8) 140; N. Z. 223. — *Cp. Mc Lean Bros. & Rigg v. Grice*, 4 C. L. R. 835.

119. = N. S. W. a. (No. 40 of 1899) § 134, except: in (a) "save as in Part V. of this Act mentioned" is inserted after "company shall"; in (j) "liquidators will" is substituted for "liquidators shall". — E. § 186; N. S. W. a. (No. 40 of 1899) 134; T. a. (33 Vic. No. 22) 160; S. A. a. (No. 557) 137, 152; Q. e. (27 Vic. No. 4) 123; h. (56 Vic. No. 24) 21; W. A. a. (56 Vic. No. 8) 141, 155; N. Z. 224, 249. — See f. (No. 1482) § 128, *infra*. — Where the liquidators in pursuance of subsection VIII. have placed the name of a person on the list of contributories, and such person has received no notice of intention to settle such list, he may apply to the Court for an order to have his name removed. — *In re Companies Statute*, 1864, 15 V. L. R. 525; 11 A. L. T. 101. The same rules apply in settling the list of contributories as in the case of a winding-up by the Court. — *Ibid.* The list of contributories must be settled before a call can be made by the liquidator. — *In re Mercantile Bank*, 14 A. L. T. 92. Merely copying out the register of members is not settling the list of contributories. — *Jean Biencourt & Co. v. Milnes*, 15 A. L. T. 237. The Court may restrain the liquidator from calling up the uncalled capital. — *Terry v. Carlton, etc., Breweries*, 22 V. L. R. 33; 2 A. L. R. 101.

120. = N. S. W. a. (No. 40 of 1899) § 135.

121. = N. S. W. a. (No. 40 of 1899) § 136, except: no division into paragraphs; in (1) "wound up voluntarily" is inserted after "company about to be"; "may by a like resolution" is inserted before "enter into any arrangement"; in (2) "and" is inserted before "any act done".

122. = N. S. W. a. (No. 40 of 1899) § 159 (1), except: "wound up voluntarily" is inserted after "about to be"; "subject to such right of appeal as is hereinafter mentioned" is inserted after "value of the creditors".

123. = N. S. W. a. (No. 40 of 1899) § 159 (2), except: "in manner aforesaid" is inserted after "company that has".

124. = N. S. W. a. (No. 40 of 1899) § 137, except: "and" is inserted before "the Court is satisfied"; "justice may require" is substituted for "the Court thinks just"; no division into paragraphs. — E. § 193; N. S. W. a. (No. 40 of 1899) 137; T. a. (33 Vic. No. 22) 165; S. A. a. (No. 557) 154; Q. e. (27 Vic. No. 4) 128; W. A. a. (56 Vic. No. 8) 157; N. Z. 226. — *Cp. f. (No. 1482) § 124, infra*. — As to practice see *In re Ballarat Patent Fuel Co.*, 2 W. W. & a'B. (E.) 172; *In re Belmore Silver, etc., Co.*, 2 V. L. R. (E.) 126; 2 A. J. R. 76; *In re Household Cooperative Supply Co.*, 11 V. L. R. 295; 6 A. L. T. 212; *In re Broken Hill N. S. M. Co.*, 14 V. L. R. 170; *In re Buckley's Swamp Estate Co.*, 18 V. L. R. 664; 14 A. L. T. 150; *In re Crown Investment, etc., Co.*, 20 V. L. R. 19; 15 A. L. T. 70; 186; *In re Starr-Bowkett, etc., Society*, 21 V. L. R. 714; 17 A. L. T. 266; 2 A. L. R. 51; *In re Mount Dundas, etc., Co.*, 26 V. L. R. 197; 6 A. L. R. 134.

125. = N. S. W. a. (No. 40 of 1899) § 138, except: no division into paragraphs; "from time to time" is inserted after "liquidators may"; "and" is inserted before "in the event of the winding-up". — E. § 194; N. S. W. a. (No. 40 of 1899) 138; T. a. (33 Vic. No. 22) 166; S. A. a. (No. 557) 141; Q. e. (27 Vic. No. 4) 129; W. A. a. (56 Vic. No. 8) 145; N. Z. 227, 252. — The petition by the liquidator may properly be addressed to the Judge in Equity. — *In re Farmers' Co-operative Co.* 16 W. N. (N. S. W.) 257. Practice on appeal to Privy Council, see *In re Anglo-Australian Investment Co.*, 14 L. R. (N. S. W.) (Eq.) 110; 3 B. C. (N. S. W.) 108. — As to practice see *In re Metropolitan Bank*, 25 V. L. R. 697; 21 A. L. T. 248; 6 A. L. R. 80.

126. = N. S. W. a. (No. 40 of 1899) § 139, except: no division into paragraphs; the beginning word is "where" instead of "if"; "and" is inserted before "a general meeting"; "continuing liquidator" is substituted for "continuing liquidators" before "if any". — E. § 189; N. S. W. a. (No. 40 of 1899) 139; T. a. (33 Vic. No. 22) 167; S. A. a. (No. 557) 142; Q. e. (27 Vic. No. 4) 130; W. A. a. (56 Vic. No. 8) 146; N. Z. 228. — A compulsory winding-up not ordered where liquidators failed to call a meeting within a year, but gave satisfactory reasons. — In re Australian, etc., Ins. Co., 2 B. C. (N. S. W.) 70. — See f. (No. 1482) § 130, *infra*. — The expression "due cause" is to be measured by the real and substantial interests of all parties affected by the liquidation. — In re Royal Standard Investment Co., 15 V. L. R. 822; 11 A. L. T. 112; In re Federal Bank of Australia 20 V. L. R. 199; 15 A. L. T. 238.

127. = N. S. W. a. (No. 40 of 1899) § 140, except: the beginning word is "where" instead of "if"; "or liquidators" is inserted after "appoint a liquidator". — E. § 186; N. S. W. a. (No. 40 of 1899) 140; T. a. (33 Vic. No. 22) 168; S. A. a. (No. 557) 143; Q. e. (27 Vic. No. 4) 131; W. A. a. (56 Vic. No. 8) 147; N. Z. 229. — See note to § 88, *supra*. The Court will not, in the same proceeding, make an order continuing a winding-up under supervision and removing or appointing liquidators. The latter should be by summons in chambers, subsequent to the former order. — In re Federal Hat Co., 13 V. L. R. 88. The fact that liquidators have claims adverse to the company is good ground for removal. — Ibid. Misconduct on their part need not be shown. The fact that another person will act gratuitously may be sufficient reason for removing a liquidator who receives compensation. — In re Mutual L. S. Co., 12 V. L. R. 777.

128. = N. S. W. a. (No. 40 of 1899) § 141, except: no division into paragraphs; "shall be published in the *Government Gazette* one month at least previously to the meeting" is substituted for the part of the section following "such advertisement". — See f. (No. 1482) § 162, *infra*.

129. = N. S. W. a. (No. 40 of 1899) § 142, except: no division into paragraphs; "Registrar-General" is substituted for "Registrar" in both instances; "and" is inserted before "on the expiration". — E. § 195; N. S. W. a. (No. 40 of 1899) 142; T. a. (33 Vic. No. 22) 170; S. A. a. (No. 557) 145; Q. e. (27 Vic. No. 4) 133; W. A. a. (56 Vic. No. 8) 149; N. Z. 231. — Within the period of three months a creditor or contributory may obtain an injunction restraining the winding-up. — Birch & Co. v. Patent Cork Asphalt Co., 20 V. L. R. 471; 16 A. L. T. 132; reversed on appeal, 21 V. L. R. 268; 16 A. L. T. 209. For a case where the Court declined to interfere, see In re Royal Land Co., 17 V. L. R. 510; 13 A. L. T. 85.

130. = N. S. W. a. (No. 40 of 1899) § 143.

131. = N. S. W. a. (No. 40 of 1899) § 144, except: "of such company" is inserted after "creditor". — Cp. In re Regent's Park Co., 24 V. L. R. 420; 20 A. L. T. 153; 4 A. L. R. 257.

132. = N. S. W. a. (No. 40 of 1899) § 145, except: "if it thinks fit" is inserted after "the court may".

133. = N. S. W. a. (No. 40 of 1899) § 146, except: "should continue" is substituted for "shall continue". — E. § 199; N. S. W. a. (No. 40 of 1899) 146; T. a. (33 Vic. No. 22) 174; Q. e. (27 Vic. No. 4) 137; N. Z. 235 (1). — For an application of this section, see In re Mutual, etc., Co., 12 V. L. R. 777. The assumption of this control is discretionary with the Court. — In re Essendon Land, etc., Co., 14 A. L. T. 163. A voluntary liquidator, acting in behalf of the company, may petition for a winding-up under supervision. — In re Maitland C. M. Co., 18 V. L. R. 722; 14 A. L. T. 107.

134. = N. S. W. a. (No. 40 of 1899) § 147, except: "winding-up subject to" is substituted for "winding-up under".

135. = N. S. W. a. (No. 40 of 1899) § 148, except: no division into paragraphs; throughout "subject to the supervision" is substituted for "under the supervision"; and for "under supervision"; "and may direct" is substituted for "the Court may direct".

136. = N. S. W. a. (No. 40 of 1899) § 149, except: no division into paragraphs; "appoint an official liquidator in the manner hereinbefore directed to be an additional liquidator, and all liquidators" is substituted for "appoint any additional liquidators. Any liquidators". — E. § 202; N. S. W. a. (No. 40 of 1899) 149; T. a. (33 Vic. No. 22) 177; Q. e. (27 Vic. No. 4) 140; N. Z. 237. — In fixing the remuneration of the liquidator the Court will generally follow the regulations made in England, and set forth in L. R. 3, Ch. p. LXIV. — In re British Bank of Australia, 19 V. L. R. 54; 14 A. L. T. 227. See also In re British Bank of Australia, 14 A. L. T. 73.

137. = N. S. W. a. (No. 40 of 1899) § 150, except: no division into paragraphs; throughout "subject to" is substituted for "under"; "but" is inserted before "save as aforesaid", and "legal" before "proceedings be deemed to be"; "and" is inserted before "in the construction"; "of this Part of this Act" is inserted between "pro-

visions" and "whereby"; "deemed to mean" is substituted for "deemed to include". — E. § 203; N. S. W. a. (No. 40 of 1899) 150; T. a. (33 Vic. No. 22) 178; Q. e. (27 Vic. No. 4) 141; N. Z. 238, 239. — The Court has power to appoint one of the official liquidators to act conjointly with or in the place of the liquidators already acting. — *In re Federal Bank of Australia*, 20 V. L. R. 199; 15 A. L. T. 238.

Supplemental provisions.

138. = N. S. W. a. (No. 40 of 1899) § 152, except: "any company" is substituted for "a company"; "subject to the supervision" is substituted for "under the supervision"; in both instances "the company" is substituted for "such company". — See *In re Provincial, etc.*, Bank, 5 V. L. R. (E.) 343; 1 A. L. T. 17.

139. = N. S. W. a. (No. 40 of 1899) § 153, except: "any company" is substituted for "a company".

[§ 140 is repealed.]

Inspection of books. 141. When an order has been made for winding up a company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just; and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise. — E. § 221; N. S. W. a. (No. 40 of 1899) 155; T. a. (33 Vic. No. 22) 183; S. A. a. (No. 557) 165; Q. e. (27 Vic. No. 4) 146; W. A. a. (56 Vic. No. 8) 167; N. Z. 253.

142. = N. S. W. a. (No. 40 of 1899) § 156, except: in both instances "chose" is substituted for "thing"; "the company" is substituted for "a company".

143. = N. S. W. a. (No. 40 of 1899) § 157, except: "it is" is omitted after "so far as"; "any company" is substituted for "a company"; "against the" is substituted for "against such". — E. § 206; N. S. W. a. (No. 40 of 1899) 157; T. a. (33 Vic. No. 22) 185; S. A. a. (No. 557) 167, 168; Q. e. (27 Vic. No. 4) 148; W. A. a. (56 Vic. No. 8) 169, 170; N. Z. 248. — As to proof of a debt for future rent, and practice regarding reservation of assets to pay the same, see *In re Heinecke & Fox*, 15 A. L. T. 55. For a case where the creditor was not allowed to prove because the affairs of the creditor, a company, and the debtor company were so inextricably mixed that the two were virtually one company, see *In re Metropolitan Permanent Building, etc., Society*, 26 V. L. R. 642; 22 A. L. T. 153; 7 A. L. R. 30.

144. = N. S. W. a. (No. 40 of 1899) § 158, except: at the beginning of the section "the company" is substituted for "a company"; throughout "the" is substituted for "such" before "company"; "by the Court or subject to" is substituted for "by or under".

145. = N. S. W. a. (No. 40 of 1899) § 161, except: "where the company is being wound up by the Court or subject to" is substituted for "in the case of a winding-up by or under"; in all other instances "the company" is substituted for "such company"; "with power for the liquidators to" is substituted for "the liquidators may"; "the" is substituted for "a" before "company is being wound up". — E. § 214; N. S. W. a. (No. 40 of 1899) 161; T. a. (33 Vic. No. 22) 188; S. A. a. (No. 557) 172; Q. e. (27 Vic. No. 4) 150; W. A. a. (56 Vic. No. 8) 174; N. Z. 258. — The affidavit of the liquidator should state the reasons for his belief that the compromise proposed will be beneficial to the company. — *In re Federal Bank of Australia* 15 A. L. T. 126. And the agreement as to costs. — *In re Companies Act, 1890*, 20 V. L. R. 243; 16 A. L. T. 1.

146. = N. S. W. a. (No. 40 of 1899) § 261 (1, 2), except: no division into paragraphs; throughout "liquidators" is substituted for "liquidator"; "they were" is substituted for "he was"; "debentures" is omitted in both instances; "like interest" is substituted for "like interests" in the first instance; "may" is inserted before "enter into any other arrangement", and "and" before "any sale"; "subject to the provisions hereinafter contained" is omitted.

147. = N. S. W. a. (No. 40 of 1899) § 261 (3), except: no division into paragraphs; the beginning words are "where in the case mentioned in the last preceding section" is substituted for "if"; throughout "liquidators" is substituted for "liquidator"; "how" is omitted before "has not voted"; "if he" is inserted before "expresses his dissent"; "or one of them" is inserted after "addressed to the liquidators"; "either to" is inserted before "abstain from carrying", and "to" before "purchase the interest".

148. = N. S. W. a. (No. 40 of 1899) § 261 (4), except: "the two last preceding sections" is substituted for "this section", and "liquidators" for "a liquidator"; "by or" is omitted before "subject to"; "under Part I. of this Act" is omitted.

Mode of determining price. 149. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement; but if the parties dispute about the same such dispute shall be settled by arbitration; and for the purposes of such arbitration the provisions of the Act of the Parliament of the United Kingdom of Great Britain and Ireland cited as *The Companies Clauses Consolidation Act, 1845*, with respect to the settlement of disputes by arbitration shall be incorporated with this Part of this Act; and in the construction of such provisions this Part of this Act shall be deemed to be the special Act; and "the company" shall mean the company that is being wound up; and any appointment by the said incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made under the hand of the liquidator if only one, or any two or more of the liquidators if more than one. — E. § 192; N. S. W. a. (No. 40 of 1899) 262; T. a. (33 Vic. No. 22) 190; S. A. a. (No. 557) 176; Q. e. (27 Vic. No. 4) 152; W. A. a. (56 Vic. No. 8) 178; N. Z. 259 (4, 5).

150. = N. S. W. a. (No. 40 of 1899) § 95, except: "subject to" is substituted for "under". — E. § 211; N. S. W. a. (No. 40 of 1899) 95; T. a. (33 Vic. No. 22) 198; S. A. a. (No. 557) 177; Q. e. (27 Vic. No. 4) 164; W. A. a. (56 Vic. No. 8) 179; N. Z. 244. — See § 82, *supra*. The Court will not restrain proceedings where the goods seized, although on the premises, do not belong to the company. — *In re Evening Post, etc., Co.*, 20 V. L. R. 335, 16 A. L. T. 66. Stay of execution may be refused. — *Thomas v. General Finance Agency*, 1 A. L. R. 28.

Fraudulent preference. 151. Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would if made or done by or against any individual person be deemed in the event of his insolvency to have been made or done by way of undue or fraudulent preference of the creditors of such person shall, if made or done by or against any company, be deemed in the event of such company being wound up under this Part of this Act to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly; and for the purposes of this section the presentation of a petition for winding-up a company shall in case of a company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding-up the company shall, in the case of a voluntarily winding-up, be deemed to correspond with the act of insolvency in the case of an individual; and any conveyance or assignment made by any company formed under this Part of this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents. — E. § 210; N. S. W. A. a. (No. 40 of 1899) 263, 264; T. a. (33 Vic. No. 22) 199; S. A. a. (No. 557) 178; Q. e. (27 Vic. No. 4) 165; W. A. a. (56 Vic. No. 8) 180; N. Z. 246, 247.

[§ 152 is repealed.] — Cp. f. (No. 1482), § 135, *infra*.

153. = N. S. W. a. (No. 40 of 1899) § 163, except: "any company" is substituted for "such company"; "wound up under this Part of this Act" is inserted after "any company"; "destroy, mutilate, alter, or falsify" is substituted for "destroys, mutilates, alters or falsifies"; "make" is substituted for "makes"; "be privy" is substituted for "is privy", and "such company" for "the company".

Prosecution of delinquent directors in case of winding-up by court. 154. Where any order is made for winding up a company by the Court or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer, or members of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up, or of its own motion, direct the official liquidators or the liquidators (as the case may be) to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company. — E. § 217; N. S. W. a. (No. 40 of 1899) 164; T. a. (33 Vic. No. 22) 202; S. A. a. (No. 557) 182; Q. e. (27 Vic. No. 4) 168; W. A. a. (56 Vic. No. 8) 184; N. Z. 256.

Prosecution of delinquent directors, etc., in case of voluntary winding-up. 155. Where a company is being wound up altogether voluntarily if it appear to the liquidators conducting such winding-up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidators may with the previous sanction of the Court prosecute such offender; and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities. — E. § 217; N. S. W. a. (No. 40 of 1899) 164; T. a.

(33 Vic. No. 22) 203; S. A. a. (No. 557) 182; Q. e. (27 Vic. No. 4) 169; W. A. a. (56 Vic. No. 8) 184; N. Z. 257.

156. = N. S. W. a. (No. 40 of 1899) § 165 (1), except: "any" is omitted before "examination"; "this Part of" is inserted after "authorized under"; "of any company under this Part of this Act" is substituted for "under this Part of this Act of any company"; "this Part of" is inserted after "arising under".

Power of Courts to make rules.

[§ 157 provides that in the case of winding-up by the Court, or under the supervision of the Court, the rules laid down in Schedule VII. shall apply, and empowers the Judges to alter said rules.]

[§ 158 provides that all orders of the Court under this Part of this Act shall be enforced in the same manner as other orders of the Court.]

Division 5. Companies authorized to register.

Regulations as to registration of existing companies. 159. The following regulations shall be observed with respect to the registration of companies under this Division of this Part of this Act (that is to say): I. No company having the liability of its members limited by Act of Parliament or Letters Patent and not being a joint stock company as hereinafter defined shall register under this Part of this Act in pursuance of this Division thereof; II. No company having the liability of its members limited by Act of Parliament or by Letters Patent shall register under this Part of this Act in pursuance of this Division thereof as an unlimited company or as a company limited by guarantee; III. No company that is not a joint stock company as hereinafter defined shall in pursuance of this Division of this Part of this Act register under this Part of this Act as a company limited by shares; IV. No company shall register under this Part of this Act in pursuance of this Division thereof, unless an assent to its so registering is given by a majority of such of its members as may be present personally or by proxy (in cases where proxies are allowed by the regulations of the company) at some general meeting summoned for the purpose; V. Where a company not having the liability of its members limited by Act of Parliament or Letters Patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present personally or by proxy at such last-mentioned general meeting; VI. When a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member or within one year afterwards for payments of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding-up the company, and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding a specified amount. In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member. — E. § 249; N. S. W. a. (No. 40 of 1899) 167; T. a. (33 Vic. No. 22) 210; S. A. a. (No. 557) 80; Q. e. (27 Vic. No. 4) 173; W. A. a. (56 Vic. No. 8) 82; N. Z. 272.

160. = N. S. W. a. (No. 40 of 1899) § 168, except: no division into paragraphs; "with the above exceptions, and subject to the foregoing regulations" is substituted for "subject as aforesaid"; "five" is substituted for "seven" in each instance; "Royal Charter" is omitted; "and of" is inserted before "Letters Patent"; "and" is inserted after "guarantee".

161. = N. S. W. a. (No. 40 of 1899) § 169, except: no division into paragraphs; "so far as the same relates to the description of companies empowered to register as companies limited by shares" is inserted before "a joint stock company"; "and" is inserted before "such company".

[§ 162 provides for the unlimited liability of banking companies for notes issued by them.]

163. = N. S. W. a. (No. 40 of 1899) § 171, except: "Registrar-General" is substituted for "Registrar"; "copartnery" is substituted for "copartnership"; in (b) "and also" is inserted before "if any"; "the above list and copy shall be accompanied by" is inserted before "a statement specifying the following".

164. = N. S. W. a. (No. 40 of 1899) § 172, except: "Registrar-General" is substituted for "Registrar", and "copartnery" for "copartnership"; "Royal Charter" is omitted.

165. = N. S. W. a. (No. 40 of 1899) § 173, except: "Registrar-General" is in both instances substituted for "Registrar".

166. = N. S. W. a. (No. 40 of 1899) § 174, except: "Registrar-General" is substituted for "Registrar"; "statutory" is omitted before "declaration"; "and every such declaration shall be made before some justice in pursuance of any act now or hereinafter in force rendering persons making a false declaration punishable for wilful and corrupt perjury" is added at the end of the section.

167. = N. S. W. a. (No. 40 of 1899) § 175, except: "Registrar-General" is substituted for "Registrar".

168. = N. S. W. a. (No. 40 of 1899) § 176, except: no division into paragraphs; "the date of" is inserted after "existing at"; "previously" is substituted for "previous"; "and" is inserted before "such notice"; "as a prepaid letter" is omitted; "to" is omitted after "communicated"; "to or" is inserted after "address"; "and" is inserted before "in the case company"; "notice shall be given" is substituted for "notice is given".

169. = N. S. W. a. (No. 40 of 1899) § 177, except: "of any company" is omitted after "registered", and inserted before "in cases"; "Act of the Parliament of Victoria or by" is substituted for "Act of Parliament, or by Royal Charter, or".

170. = N. S. W. a. (No. 40 of 1899) § 178, except: "every" is substituted for "a".

171. = N. S. W. a. (No. 40 of 1899) § 179, except: no division into paragraphs; "if any" is omitted after "fees"; "third and fourth Schedules" is substituted for "Table marked B. in the second Schedule"; "Registrar-General shall notify in the *Government Gazette*" is substituted for "Registrar shall certify under his hand"; "and" is inserted before "thereupon"; "with power to hold lands and to exercise all the functions of an incorporated company" is omitted. — E. § 259; N. S. W. a. (No. 40 of 1899) 179; T. a. (33 Vic. No. 22) 222; S. A. a. (No. 557) 90; Q. v. (27 Vic. No. 4) 185; W. A. a. (56 Vic. No. 8) 92; N. Z. 282. — A notice in the *Gazette* that a company is registered under the Act is not sufficient. A date must be specified. The notice may be given a retrospective effect. — *In re Melbourne, etc., Co.*, 2 W. W. & a'B. (E.) 127.

172. = N. S. W. a. (No. 40 of 1899) § 180, except: no division into paragraphs; "such notice in the *Government Gazette*" is substituted for "a certificate of incorporation given at any time to any company registered in pursuance of this Division of this Part of this Act"; "notice shall be deemed" is substituted for "certificate shall be deemed".

Transfer of trust property to company. **173.** All such property real and personal (including all interests and rights in to and out of property real and personal and including obligations and choses in action) as may belong to or be vested in the company at the date of its registration under this Part of this Act shall on registration pass to and vest in the company as incorporated under this Part of this Act for all the estate and interest of the company therein. — E. § 260; N. S. W. a. (No. 40 of 1899) 181; T. a. (33 Vic. No. 22) 224; S. A. a. (No. 557) 92; Q. v. (27 Vic. No. 4) 187; W. A. a. (56 Vic. No. 8) 94; N. Z. 284.

174. = N. S. W. a. (No. 40 of 1899) § 182.

175. = N. S. W. a. (No. 40 of 1899) § 183, except: no division into paragraphs; "or" is substituted for "and" before "legal proceedings"; "nevertheless" is inserted before "execution".

Effect of registration under this Part of this Act. **176.** When a company is registered under this Part of this Act in pursuance of this Division thereof all provisions contained in any Act of Parliament, deed of settlement, Letters Patent, or other instrument constituting or regulating the company (including in the case of a company registered as a company limited by guarantee the resolution declaring the amount of the guarantee) shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association. And all the provisions of this Part of this Act shall apply to such company and the members contributories and creditors thereof in the same manner in all respects as if it had been formed under this Part of this Act, subject to the provisions following (that is to say): I. That Table A in the second Schedule of this Act shall not, unless adopted by special resolution, apply to any company registered under this

Part of this Act in pursuance of this Division thereof; II. That the provisions of this Part of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered; III. That no company shall have power to alter any provision contained in any Act of Parliament relating to the company; IV. That no company shall have power without the sanction of the Governor in Council to alter any provision contained in any Letters Patent relating to the company; V. That in the event of the company being wound up, every person shall be a contributory in respect of the debts and liabilities of the company contracted prior to registration who is liable to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges, and expenses of winding-up the company so far as relates to such debts or liabilities as aforesaid. And every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid. And in the event of the death or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, and to the husbands of married contributories shall apply; VI. That nothing herein contained shall authorize any company to alter any such provisions contained in any deed of settlement, contract of copartnership, Letters Patent, or other instrument constituting or regulating the company as would, if such company had originally been formed under this Part of this Act, have been contained in the memorandum of association, and are not authorized to be altered by this Part of this Act. But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Part of this Act in pursuance of this Division thereof, by virtue of any Act of Parliament, deed of settlement, contract of copartnership, Letters Patent, or other instrument constituting or regulating the company. — E. § 263; N. S. W. a. (No. 40 of 1899) 184; T. a. (33 Vic. No. 22) 227; S. A. a. (No. 557) 95; Q. e. (27 Vic. No. 4) 190; W. A. a. (56 Vic. No. 8) 97; N. Z. 287.

Power of court to restrain proceeding. 177. The court may, at any time after the presentation of a petition for winding-up a company registered in pursuance of this Division of this Part of this Act and before making an order for winding-up the company, upon the application by motion of any creditor of the company, restrain further proceedings in any action suit or legal proceedings against any contributory of the company as well as against the company as hereinbefore provided upon such terms as the court thinks fit. — See note to N. S. W. a. (No. 40 of 1899) § 92. Cp. f. (No. 1482) 124, *infra*.

Effect of order for winding-up company. 178. When an order has been made for winding-up a company registered in pursuance of this Division of this Part of this Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court and subject to such terms as the Court may impose. — See note to N. S. W. a. (No. 40 of 1899) § 94.

[§§ 179—180 relate to the power of banking companies to register under this Act.]

[§§ 181—182 relate to companies formed for purposes not of gain.]

Division 6. Application of this Part of this Act to unregistered companies.

Winding-up of unregistered companies. 183. Subject as hereinafter mentioned, any partnership, association, or company consisting of more than five members, and not registered under this Part of this Act, and hereinafter included under the term “unregistered company”, may be wound up under this Part, and all the provisions of this Part of this Act with respect to winding-up shall apply to such company with the following exceptions and additions: I. Where proceedings for winding-up an unregistered company are instituted, the principal place of business of such company shall for all the purposes of this Part of this Act be deemed to be the registered office of the company; II. No unregistered company shall be wound

up under this Part of this Act voluntarily or subject to the supervision of the Court; III. The circumstances under which an unregistered company may be wound up by the Court are as follows (that is to say): a) When the company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs; b) When the company is unable to pay its debts; c) When the Court is of opinion that it is just and equitable that the company should be wound up; IV. An unregistered company shall for the purpose of this Part of this Act be deemed unable to pay its debts: a) When a creditor to whom the company is indebted by assignment or otherwise in a sum exceeding fifty pounds then due has served on the company, by leaving the same at the principal place of business of the company or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due; and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor; b) When any action, suit, or other legal proceeding has been instituted against any member of the company for any debt or demand due or claimed to be due from the company or from him in his character of member of the company, and (notice in writing of the institution of such action, suit, or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct) the company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against all costs, damages, and expenses to be incurred by him by reason of the same; c) When execution or other process issued on a judgment, decree, or order obtained in any court in favour of any creditor in any proceeding instituted by such creditor against the company, or against any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the company is returned unsatisfied; d) When it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts. — See notes to N. S. W. a. (No. 40 of 1899) § 84—88, 98. — The provisions of this Part do not apply to a railway company incorporated by Act of Parliament. — In re St. Kilda and Brighton Ry. Co., 1 W. W. & a'B. (E.) 157. See also In re St. Kilda and Brighton Ry. Co., 2 W. & W. (I. E. & M.) 69. Nor to a mining company registered under Act No. 228. — In re Collingwood Q. M. Co., 5 W. W. & a'B. (E.) 190. But a foreign company can be wound up even though an order for winding-up has been made at the domicile of the company. — In re Oriental Bank Corporation, 10 V. L. R. (E.) 154. And so may a building society. — In re Premier, etc., Society, 16 V. L. R. 424; 12 A. L. T. 1. As to application of certain provisions of the *Supreme Court Act, 1890*, see In re Premier, etc., Society, 16 V. L. R. 740; 12 A. L. T. 111.

Who to be deemed a contributory in the event of company being wound up. 184. In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or to contribute to the payment of the costs, charges, and expenses of winding-up the company; and every such contributor shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid: but in the event of the death or the insolvency of any contributory, or the marriage of any female contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs, and devisees of a deceased contributory, and to the assignees of an insolvent contributory, and to the husband of married contributories shall apply. — See notes to N. S. W. a. (No. 40 of 1899) § 79—83.

Power of court to restrain further proceedings. 185. The court may, at any time after the presentation of a petition for winding up an unregistered company and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit, or legal proceeding against any contributory of the company as well as against the company as hereinbefore provided, upon such terms as the court thinks fit. — See note to N. S. W. a. (No. 40 of 1899) § 92.

Effect of order for winding up company. 186. Where an order has been made for winding up an unregistered company, in addition to the provisions hereinbefore contained in the case of companies formed under this Part of this Act, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the court, and subject to such terms as the court may impose. — See note to N. S. W. a. (No. 40 of 1899) § 94.

Provision in case of unregistered company. 187. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the order made for winding up such company, or by any subsequent order, direct that all such property, real and personal including all interest, claims, and rights into and out of property, real and personal, and including choses in action, as may belong to or be vested in the company, or to or in any person or persons in trust for or on behalf of the company, or any part of such property is to vest in the official liquidator by his official name; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly. And the official liquidator may, in his official name or in such name and after giving such indemnity as the court directs, bring or defend any actions, suits, or other legal proceeding relating to any property vested in him or them or any actions, suits, or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the company and recovering the property thereof. — E. § 272; N. S. W. a. (No. 40 of 1899) 185; T. c. (59 Vic. No. 19) 24; S. A. a. (No. 557) 193; Q. e. (27 Vic. No. 4) 197; W. A. a. (56 Vic. No. 8) 195.

Provisions in this Division of this Part of Act cumulative. 188. The provisions made by this Division of this Part of this Act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding up companies by the Court: and the Court or official liquidator may in addition to anything contained in this Division of this Part of this Act exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies formed under this Part of this Act. But an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Part, and then only to the extent provided by this Division of this Part of this Act. — See note to N. S. W. a. (No. 40 of 1899) § 98.

Power to assignees to compromise. 189. Where the estate of any company or body heretofore has been placed under sequestration, the assignees of such estate may compromise all calls and contributions, and liabilities to calls and contributions, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company or body or the creditors thereof, and any shareholder or member of the company or body or other debtor or person apprehending liabilities to the company or body or the creditors thereof, and all questions in any way relating to or affecting the assets of the company or body or the winding-up thereof upon the receipt of such sums payable at such times, and generally upon such terms as may be agreed upon, with power for the assignees to take any security for the discharge of such debts, contributions, or liabilities and to give complete discharges in respect of all or any such calls contributions, debts, or liabilities. And every such discharge shall thenceforth operate to all intents and purposes as an absolute release to the shareholders or members to whom the same shall relate, and may be by them pleaded and used in law and in discharge of any action, execution, or other proceeding of any creditor whose debt or claim is by them provable under such sequestration; and every such shareholder and member be entitled as between himself and the other shareholders or members of the company or body to credit in respect of any such sum or sums as shall by such release or discharge be declared to have been paid by him. Provided that no compromise shall be effected unless with the sanction of the creditors of the company or body in accordance with the provisions of section eighty-seven of the *Insolvency Act, 1890*.

Part II. Mining Companies.

[§§ 190—333 relate to mining companies.]

Part III. Life Assurance Companies.

[§§ 334—381 relate to life assurance companies.]

Part IV. Trustee Companies.

[§§ 382—385 relate to trustee companies.]

Part V. Wages of Companies' Servants.

Interpretation. 386. In this Part of this Act the expression "clerk or servant" shall mean and include any clerk, artificer, handicraftsman, miner, journeyman, servant in husbandry, labourer, workman, domestic or menial servant, who whether under the age of twenty-one years or above that age has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour. — E. § 209. — The words "clerk or servant" do not include a manager. — In re Intercolonial Smelting, etc., Co., 13 V. L. R. 896; 9 A. L. T. 76.

[§ 387 is repealed.] — See f. (No. 1482) § 148, *infra*.

Liquidator to discharge same upon receipt of sufficient assets. 388. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the liquidator or official liquidator shall discharge the foregoing debts forthwith so far as the assets of the company are and will be sufficient to meet them as and when such assets came into the hands of such liquidator or official liquidator. — E. § 209.

Wages and salary to be a first charge on the property of the company. 389. All such wages or salary as aforesaid shall be a first charge upon all the property of the company of whatsoever description notwithstanding such property be mortgaged or charged to secure the payment of any moneys or that there be any lien upon the same. Provided that nothing in this Part of this Act contained shall be taken to affects the right and priority of persons with respect to any property over which they held a mortgage, charge, or lien at the time of the passing of *The Companies' Wages Act, 1885*. — E. § 209.

*Schedules.¹⁾**First Schedule.*

Date of Act.	Title of Act.	Extent of Repeal.
27 Vic. No. 190.	The Companies Statute, 1864.	So much as is not already repealed.
31 Vic. No. 324.	An Act to amend The Mining Companies Limited Liability Act, 1864.	So much as is not already repealed.
35 Vic. No. 400.	The Mining Companies Act, 1871.	So much as is not already repealed.
37 Vic. No. 474.	The Life Assurance Companies Act, 1873.	The whole.
45 Vic. No. 722.	The Companies Act, 1881.	The whole.
46 Vic. No. 742.	The Forfeiture of Mining Shares Validating Act, 1882.	So much as is not already repealed.
47 Vic. No. 764.	An Act to provide for the Incorporation of Literary, Scientific and other Association and Institutions.	So much as is not already repealed.
47 Vic. No. 779.	The Forfeiture of Mining Shares Act, 1883.	The whole.
48 Vic. No. 804.	The Amending Companies Statute, 1884.	The whole.
49 Vic. No. 851.	The Companies Wages Act, 1885.	The whole.
50 Vic. No. 881.	The Mining Companies Act, 1886.	The whole.
52 Vic. No. 990.	The Trustees Companies Act, 1888.	The whole.
52 Vic. No. 991.	The Banking Companies Registration Act, 1888.	The whole.
53 Vic. No. 1027.	The Life Assurance Companies Act, 1889.	The whole.

¹⁾ In so far as they relate to trading companies.

*Second Schedule.***Table A. Regulations for Management of a Company Limited by Shares.**

[Substantially identical with N. S. W. a. (No. 40 of 1899) Sched. II. Table A. In (29) "six months" is substituted for "four months"; in (30) "and August respectively" is inserted after "February"; in (44) "or other legal curator" is omitted; in (50) "unless it purports, etc." is omitted; in (79) "six months" is substituted for "year"; in (82) "on the Registrar-General and" is inserted after "served"; in (91) "Governor in Council" is substituted for "Registrar".]

Third Schedule.

Table of Fees to be paid to the Registrar-General by a Company having a Capital divided into Shares.

Fourth Schedule.

Table of Fees to be paid to the Registrar-General by a Company not having a Capital divided into Shares.

Fifth Schedule.

Form of Statement referred to in Division 3 of Part I. of this Act.

[Substantially similar to N. S. W. a. (No. 40 of 1899) Sched. II, Form C, except: "that the liability of the members is limited" is inserted after "sincerely declare".]

Sixth Schedule.

(Forms A., B., and C. are substantially similar to N. S. W. a. (No. 40 of 1899) Sched. III. Forms A., B., and C., except: the statement as to the location of the registered office of the company is omitted. Form D. is substantially similar to Form D. In Form E. (5) and (6) are omitted).

*Seventh Schedule.***Rules for Proceedings for Winding up Companies in the Supreme Court.***Petition.*

1. Every petition for winding up a company by the Court or subject to the supervision of the Court shall be intitled in the matter of Part I. of the *Companies Act 1890* and of the company to which the petition relates, describing the company by its most usual style or firm.

2. Every such petition shall be advertised seven clear days before the hearing as follows: I. In the case of a company whose registered office, or if there be no such office then whose principal or last known principal place of business, is or was situated within ten miles of the General Post Office in Melbourne, once at least in the *Government Gazette* and once at least in two daily Melbourne newspapers. II. In the case of any other company, once at least in the *Government Gazette* and a daily Melbourne paper and once at least in two local newspapers circulating in the district in which such office or place of business is or was situated. The advertisement shall state the day on which the petition was presented and the name and address of the petitioner and of his solicitor and Melbourne agent (if any).

3. Every such petition shall unless presented by the company be served at the registered office (if any) of the company, and if there be no registered office then at the principal or last-known principal place of business of the company if any such can be found upon any member officer or servant of the company there, or in case no such member officer or servant can be found there, then by being left at such registered office or principal place of business or by being served on such member or members of the company as the court may direct; and every petition for the winding-up of a company subject to the supervision of the Court shall also be served upon the liquidator (if any) appointed for the purpose of winding up the affairs of the company.

4. Every petition for the winding-up of any company by the Court or subject to the supervision of the Court shall be verified by an affidavit referring thereto in the form or to the effect set forth in the table of forms annexed hereto. Such affidavit shall be made by the petitioner or by one of the petitioners if there be more than one or in case the petition is presented by the company by some director and secretary or other principal officer thereof; and shall be sworn after and filed within four days after the petition is presented and shall be sufficient *prima facie* evidence of the statements in the petition.

5. Every creditor or contributory shall be entitled to be furnished by the solicitor to the petitioner with a copy of such petition within twenty-four hours after requiring the same, on paying at the rate of one shilling per common law folio for such copy.

Order to wind up a company.

6. Every order made for the winding-up of a company by the Court or subject to its supervision shall within twelve days after the date thereof be advertised by the petitioner once in the

Government Gazette; and shall be served upon such persons (if any) and in such manner as the Court may direct.

7. A copy of every order for winding up a company certified to be a true copy thereof as passed and entered shall be left by the petitioner within twelve days after the date thereof at the office of the Court of Insolvency; and in default thereof any other person interested in the winding-up may leave the same and the Judge may if he thinks fit give the carriage and prosecution of the order to such person. Upon such copy being left a Judge's summons shall be taken out to proceed with the winding-up of the company and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons a time shall if the Judge think fit be fixed for the appointment of an official liquidator and for the proof of debts and for the list of contributories to be brought in, and directions may be given as to the advertisements to be issued for all or any of such purposes and generally as to the proceedings and parties to attend thereon. The proceedings under the order shall be continued by adjournment and when necessary by further summons and any such direction as aforesaid may be given, added to, or varied at any subsequent time as may be found necessary.

Official liquidators.

8. The official liquidator shall be nominated by order; and the order shall fix the times or periods at which the official liquidator is to leave his accounts of his receipts and payments at the Judge's chambers, and shall direct that all moneys to be received shall be paid into some bank approved for the purpose by the Governor in Council immediately after the receipt thereof to the account of the official liquidator of the company; and an account shall be opened there accordingly, and an office copy of the order shall be lodged at the bank.

9. The official liquidator shall on each occasion of passing his account and also whenever the Judge may so require satisfy the Judge that his sureties are living and resident in Victoria, and have not been adjudged bankrupt or become insolvent; and in default thereof may be required to enter into fresh security within such time as shall be directed.

10. Every nomination of an official liquidator shall be advertised in such manner as the Judge shall direct immediately after he has been nominated.

11. Where it is desired to appoint provisionally an official liquidator, an application for that purpose may at any time after the presentation of the petition for winding up the company be made by summons without advertisement or notice to any party, unless the Judge otherwise directs.

12. In the case of the death, removal, or resignation of an official liquidator, another shall be nominated in his room if the Court thinks fit in the same manner as directed in the case of a first nomination; and the proceedings for that purpose may be taken by such party interested as may be authorized by the Judge to take the same.

13. The official liquidator shall with all convenient speed after he is nominated proceed to make up, continue, complete, and rectify the books of account of the company, and shall provide and keep such books of account as may be necessary or as the Judge may direct for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger which shall contain the separate accounts of the contributories and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said Part of the said Act and these rules.

14. The official liquidator shall be allowed in his accounts or otherwise to be paid such salary or remuneration as the Judge may from time to time direct, including any necessary employment of assistant or clerks by the official liquidator to which regard shall be had; and such salary or remuneration may either be fixed at the time of the nomination of the official liquidator or at any time thereafter as the Judge may think fit. Every allowance of such salary or remuneration, unless made at the time of the nomination of the official liquidator or upon passing his accounts, shall be made upon application for that purpose by the official liquidator upon notice to such person (if any) and supported by such evidence as the Judge shall require; nevertheless the Judge may from time to time allow any sum he may think fit to the official liquidator on account of the salary or remuneration to be thereafter allowed.

15. The accounts of the official liquidator shall be left at the Judge's chambers at the times directed by the order nominating him and at such other times as may from time to time be required by the Judge; and such accounts shall upon notice to such parties (if any) as the Judge directs be passed and verified in the same manner as receivers' accounts.

Proof of debts.

16. For the purpose of ascertaining the debts and claims due from the company and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued at such time as the Judge directs; and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the official liquidator and shall appoint a day for adjudicating thereon.

17. The creditors need not attend upon the adjudication nor prove their debts or claims, unless they are required to do so by notice from the official liquidator; but upon such notice being given they are to come in and prove their debts within a time to be therein specified.

18. The official liquidator shall investigate the debts and claims sent to him and ascertain so far as he is able which of such debts and claims are justly due from the company. He shall make out and leave at the Judge's chambers a list of all the debts and claims sent in to him distinguishing which of the debts and claims or part of debts and claims so claimed are in his opinion justly due and proper to be allowed without further evidence, and which of them in his opinion ought to be proved by the creditors. He shall make and file prior to the time appointed for adjudication an affidavit setting forth the debts and claims which in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts are justly due and proper to be allowed and the reasons for such belief.

19. At the time appointed for adjudicating upon the debts and claims or at any adjournment thereof, the Judge may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same or any of them to be proved by the claimants and adjourn the adjudication thereon to a time to be then fixed; and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed of such allowance.

20. The official liquidator shall give notice to the creditors whose debts or claims have not been allowed on his affidavit that they are required to come in and prove the same by a day to be therein named, being not less than four days after such notice and to attend at a time to be therein named being the time appointed by the advertisement or by adjournment (as the case may be) for adjudicating upon such debts and claims.

21. The value of such debts and claims as are made admissible to proof by the one hundred and forty-third section of this Act shall so far as is possible be estimated according to the value thereof at the date of the order to wind up the company.

[R. 22 is repealed.]

23. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator shall be allowed their costs of proof in the same manner as in the case of debts proved in a cause.

24. The result of the adjudication upon debts and claims shall be stated in a certificate made by the associate, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed and whether allowed as against any particular assets or in any other qualified or special manner.

List of contributories.

25. The official liquidator shall with all convenient speed after his nomination or at such other time as the Judge directs make out and leave at the chambers of the Judge a list of the contributories of the company; and such list shall be verified by affidavit of the official liquidator, and shall so far as is practicable state the respective addresses of, and the number of shares or extent of interest to be attributed to, each contributory, and distinguish the several classes of contributories; and such list may from time to time by leave of the Judge be varied or added to by the official liquidator.

26. Upon the list of contributories being left at the chambers of the Judge the official liquidator shall obtain an appointment for the Judge to settle the same, and shall give notice in writing to every person included in such list of such appointment, stating in what character and for what number of shares or interest such person is included in the list; and where any variation or addition to such list is at any time made by the official liquidator a similar notice shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list or such variation or addition.

27. The result of the settlement of the list of contributories shall be stated in a certificate by the associate, and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time or as to any particular person or stating any variation of the list.

Sales of property.

28. Any real or personal property belonging to the company may be sold with the approbation of the Judge in the same manner as in the case of a sale under a decree or order of the Court in a suit, or if the Judge shall so direct by the official liquidator; and upon any such sale by the official liquidator the conditions or contracts of sale shall be settled and approved of by the Judge unless he shall otherwise direct; and the Judge may if he thinks fit direct such conditions and contracts and the abstract of the title to the property to be submitted to some counsel, and may upon any sale by public auction fix a reserved bidding; and, unless on account of the small amount of the purchase money or other cause it shall, having regard to the amount of security given by the official liquidator, be thought proper that the purchase moneys shall be paid to him, all conditions and contracts of sale shall provide that the purchase moneys shall be paid by the respective purchaser into some bank approved by the Governor in Council and named therein to the account of the official liquidator of the company.

Calls.

29. Every application to the Judge to make any call on the contributories or any of them for any purpose authorized by Part I. of this Act shall be made by summons stating the proposed amount of such call; and such summons shall be served four clear days at least before the day appointed for making the call on every contributory proposed to be included in such call, or if the Judge shall so direct notice of such intended call may be given by advertisement.

30. When any order for a call has been made a copy thereof shall be forthwith served upon each of the contributories included in such call together with a notice from the official liquidator specifying the amount or balance due from such contributory (having regard to the provisions of Part. I of this Act) in respect of such call; but such order need not be advertised unless for any special reason the Judge shall so direct.

31. At the time of making an order for a call the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary, and at the time appointed by any such adjournment or upon a summons to enforce payment of the call duly served; and upon proof of the service of the order and notice of the amount due and non-payment an order may be made for such of the contributories who have made default, or of such of them against whom it shall be thought proper to make such order to pay the sum, which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively.

Payment in of moneys and deposit of securities.

32. If any official liquidator do not pay all moneys received by him into some bank approved by the Governor in Council within seven days next after the receipt thereof, unless the Judge otherwise directs, such official liquidator shall be charged in his account with twenty shillings for any sum amounting to one hundred pounds, and a proportionate sum for any larger amount retained in his hands beyond such period for every seven days during which the same have been so retained; and the Judge may for any such retention disallow his salary or remuneration or any part thereof.

33. All bills, notes, and other securities payable to the company or to the official liquidator thereof shall as soon as they come to the hands of the official liquidator, unless the Judge otherwise directs, be deposited by him in some bank as aforesaid for the purpose of being presented by the bank for acceptance and payment or for payment only, as the case may be.

34. All orders for payment of debts, calls, purchase or other moneys due from any contributory or other person shall direct such debts, calls, or other moneys to be paid into some bank approved for such purpose by the Governor in Council to the account of the official liquidator, unless on account of the smallness of the amount or other cause it shall, having regard to the amount of security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator. Provided that, where any such order has been made directing payment of a specific sum into a bank if it be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof, or for any other reason, an order may either before service of such former order or after the time thereby fixed for payment, be made without notice for payment of the same sum to the official liquidator.

35. At the time of the service of any order for payment into a bank a notice to the purport or effect set forth in the table of forms annexed to these rules shall be given by the official liquidator to the party served, for the purpose of informing him how the payment is to be made; and before the time fixed for such payment the official liquidator shall furnish the cashier of the bank with a certificate to the purport or effect set forth in the table of forms hereto, to be signed by such cashier and delivered to the party paying in the money therein mentioned.

36. For the purpose of enforcing any order for payment of money into a bank an affidavit of the official liquidator to the purport or effect set forth in the table of forms annexed to these rules shall be sufficient evidence of the non-payment thereof.

37. All moneys, bills, notes, and other securities paid and delivered into a bank shall be placed to the credit of the account of the official liquidator, and orders for any such payment or delivery shall direct the same accordingly.

Investment and payment out of moneys.

38. All bills, notes, and other securities paid and delivered into a bank shall be delivered out upon a request signed by the official liquidator and countersigned by the associate of the Judge; and moneys placed to the account of the official liquidator shall be paid out upon cheques or orders signed by the official liquidator and countersigned by the associate of the Judge.

39. All or any part of the money for the time being standing to the credit of the account of the official liquidator at any bank, and not immediately required for the purposes of the winding-up, may be invested in the purchase of Government securities in the name of the official liquidator. All such investments shall be made by a bank upon a request signed by the official liquidator and countersigned by the associate of the Judge; and such request shall be a sufficient authority for debiting the account with the purchase money; and such securities shall not afterwards be sold or transferred or otherwise dealt with, except upon a direction for that purpose signed by the official liquidator and countersigned by the associate of the Judge, or under an order to be made by the Judge.

40. All dividends and interest to accrue due upon any such securities shall from time to time be received by the bank under a power of attorney to be executed by the official liquidator and placed to the credit of the account of such official liquidator.

Meeting of creditors or contributories.

41. When the Judge directs a meeting of the creditors or contributories of the company to be summoned the official liquidator shall give notice in writing seven clear days before the day appointed for such meeting to every creditor or contributory of the time and place appointed for such meeting, and of the matter upon which the Judge desires to ascertain the wishes of the creditors or contributories; or if the Judge so direct such notice may be given by advertisement, in which case the object of the meeting need not be stated, and it shall not be necessary to insert such advertisement in the *Government Gazette*.

42. At any such meeting the votes may be given either personally or by proxy, but no creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the company.

43. The direction of the Judge for any such meeting and the appointment of a person to act as chairman thereof shall be testified by a memorandum signed by the Judge's associate.

Direction or sanction of the Judge.

44. The sanction of the Judge to the drawing, accepting, making, and endorsing of any bill of exchange or promissory note by any official liquidator shall be testified by a memorandum on such bill of exchange or promissory note signed by the Judge's associate.

45. Every application for the sanction of the Judge to a compromise with any contributory or other person indebted to the company shall be supported by the affidavit of the official liquidator that he has investigated the affairs of such contributory or person and stating his belief that the proposed compromise will be beneficial to the company, and his reasons for such belief; and the sanction of the Judge thereto shall be testified by a memorandum signed by his associate upon the agreement of compromise, unless any party shall desire to appeal from the decision of the Judge in which case an order shall be drawn up for that purpose.

46. The direction or sanction of the Judge for any other proceeding or act to be taken or done by the official liquidator shall be obtained upon summons, and an order shall be drawn up thereon unless the Judge otherwise direct.

47. Every application under the one hundred and twenty-third, the one hundred and twenty-fourth, and the one hundred and twenty-seventh sections of the foregoing Act shall be made by petition or motion or if the Judge so direct by summons at chambers; and every application under the one hundred and fifty-fourth and the one hundred and fifty-fifth sections shall be made by petition.

48. When an advertisement is required for any purpose, except where these rules otherwise direct, the advertisement shall be inserted once in the *Government Gazette* and in such other newspaper or newspapers and for such number of times as may be directed. The Judge may in such cases as he thinks fit dispense with any advertisement required by these rules.

Orders.

49. All orders made in chambers in the matter of the winding-up of any company shall be drawn up in chambers, unless otherwise specially directed.

50. All orders made in chambers shall be filed in the office of the Court of Insolvency.

51. All orders, exhibits, memorandums, admissions, and office copies of affidavits, examinations, depositions, certificates, and all other documents relating to the winding-up of any company shall be filed by the official liquidator as far as may be in one continuous file and such file shall be kept by the official liquidator or otherwise as the Judge may from time to time direct. Every contributory of the company and every creditor thereof whose debt or claim has been allowed shall be entitled at all reasonable times to inspect such file free of charge, and at his own expense to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding one shilling per common law folio; and such file shall be produced in Court or before the Judge and otherwise as occasion requires.

Admission of documents.

52. Any party to any proceeding in Court or chambers relating to the winding-up of a company may by notice in writing call on any other party therein competent to admit the same to admit any document saving all just exceptions; and in case of refusal or neglect so to admit the costs of proving the document shall be paid by the party so neglecting or refusing, unless the Judge is of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice have been given, except in cases where the omission to give the notice is in the opinion of the taxing officer a saving of expense.

Affidavits.

53. When an order has been made for the winding-up of any company, any person intending to use any affidavit in any proceeding under such order shall file the same and give notice thereof to the official liquidator. The person other than the official liquidator filing the affidavit shall not be required to take an office copy thereof; but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used unless the Judge otherwise direct.

Attendance and appearance of parties.

54. Every person for the time being on the list of contributories of the company left at the chambers of the Judge by the official liquidator, and every person having a debt or claim against the company allowed by the Judge shall be at liberty at his own expense to attend the proceedings before the Judge, and shall be entitled upon payment of the costs occasioned thereby to have notice of all such proceedings as he shall by written request desire to have notice of; but if the Judge be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company, he may direct such costs or a gross sum in lieu thereof to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

55. The Judge may from time to time appoint any one or more of the contributories or creditors as he thinks fit to represent before him at the expense of the company all or any class of the contributories or creditors upon any question as to a compromise with any of the contributories or creditors or in or about any other proceedings before him relating to the winding-up of the company, and may remove the person or persons so appointed. In case more than one person shall be so appointed, they shall unite in employing the same solicitor to represent them.

56. No contributory or creditor shall be entitled to attend any proceedings at the chambers of the Judge, unless and until he has entered in a book to be kept there for that purpose his name and address, and the name and address of his solicitor (if any), and upon any change of his address or of his solicitor his new address, and the name and address of his new solicitor.

Provisional liquidator.

57. All the above rules relating to an official liquidator shall so far as circumstances will permit and subject in each case to the directions of the Judge apply to a provisional liquidator.

Services of summonses, notices, etc.

58. Services upon contributories and creditors shall be effected (except when personal service is required) by sending the notice or a copy of the summons or order or other proceeding through the post in a prepaid letter addressed to the solicitor (if any) of the party to be served or otherwise to the party himself at the address entered or last entered pursuant to the above rule, or if no such entry has been made then if a contributory to his last-known address or place of abode, and if a creditor to the address given by him pursuant to the foregoing rule; and such notice or copy, summons, order, or other proceeding shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post office and notwithstanding the same may be returned by the post office.

59. No service under these rules shall be deemed invalid by reason of the christian name or any of the christian names of the person on whom service is sought to be made being omitted or designated by initial letters in the list of contributories, or in the summons, notice, order, or other document wherein the name of such contributory or creditor is contained, if the Judge is satisfied that such service has been in other respects sufficient.

Termination of winding-up.

60. Upon the termination of the proceedings in chambers for the winding-up of any company a balance-sheet shall be brought in by the official liquidator of his receipts and payments and verified by his affidavit. And the official liquidator shall pass his final account and the balance (if any due thereon) shall be certified. And upon payment of such balance as the Court or Judge shall direct the recognisance entered into by the official liquidator and his sureties may be vacated.

61. When the official liquidator has passed his final account and the balance (if any) certified to be due thereon has been paid in such manner as the Judge directs, a certificate shall be made by the associate that the affairs of the company have been completely wound up; and in case the company has not been already dissolved the official liquidator shall immediately after such certificate has become binding apply for an order that the company be dissolved from the date of such order.

62. When the proceedings for winding up any company have been completed the file of proceedings in the office of the Court of Insolvency (if any) and the book containing the account of the official liquidator shall be deposited in the Registrar-General's office.

63. Where no mode of proceeding is prescribed by the rules for any application authorized under Part I. of this Act to be made to the Court, and there is no mode of proceeding defined according to the general practice of the Court, such application may be made by summons in chambers or in such other manner as the Court may direct.

64. The solicitor of the official liquidator, shall conduct all such proceedings as are ordinarily conducted by solicitors of the court; and where the attendance of his solicitor is required in any proceeding in Court or chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Judge shall direct him to attend.

65. The power of the Court and of the Judge sitting in chambers to enlarge or abridge the time for closing any act, or taking any proceeding to adjourn or review any proceeding, and to give any direction as to the course of proceeding is unaffected by these rules.

Forms.

66. The forms set forth or referred to in the Table of Forms annexed to these rules with such variations as the circumstances of each case may require may be used for the respective purposes mentioned in the titles of such forms.

[The remainder of the Schedule contains the forms.]

[Schedules VIII. to XXV. do not relate to trading companies.]

b) 56 Vic. No. 1269.¹⁾ An Act to amend the Companies Act, 1890 (1st December, 1892).

Short title and construction. 1. 1. This Act may be cited as the *Companies Act Amendment Act, 1892*, and this Act and the *Companies Act, 1890*, may be cited together as the *Companies Acts*. 2. This Act shall be construed as one with the *Companies Act, 1890*.

Repeal of Act. Schedule. 2. The Act mentioned in the Schedule to this Act is hereby repealed.

Where compromise proposed, Court may order meeting, etc., to decide. 3. Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Act or afterwards in the course of being wound up, either voluntarily or by or under the supervision of the Court, under the *Companies Acts*, and the creditors of such company or any class of such creditors, it shall be lawful for the Court in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy or attorney at such meeting shall agree to any arrangement or compromise such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors as the case may be, and also on the liquidator and contributories of the said company. — Amended by e. (No. 1442) § 3, *infra*. — The Court must assure itself that the scheme proposed is legal. — In re Commercial Bank of Australia, 19 V. L. R. 333, 15 A. L. T. 57. See further In re Carlton Brewery, 8 A. L. R. (C. N.) 37; In re Australian, etc., Bank, 26 V. L. R. 686, 22 A. L. T. 177.

Power of court to stay proceedings. 4. Where no order has been made or resolution passed for the winding-up of a company, and any compromise or arrangement shall be proposed between such company and the creditors of such company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of the company or of any creditor of the company, to restrain further proceedings in any action, suit, petition, or proceeding against the company, upon such terms as the Court shall think fit, and also to order that a meeting of such creditors or class of creditors shall be summoned in such manner and at such time as the Court shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy or attorney at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding upon the company and its shareholders, and upon all such creditors or class of creditors, as the case may be. — Amended by e. (No. 1442) § 2, *infra*. Cp. In re Commercial Bank of Australia, 14 A. L. T. 239; Melbourne, etc., Society v. Burston, 21 V. L. R. 531; 17 A. L. T. 178; 1 A. L. R. 160; Gray v. Australian, etc., Bank, 13 A. L. T. 230; In re Premier Permanent Building, etc., Association, 20 A. L. T. 225; 5 A. L. R. 85; In re City of Melbourne Bank, 19 A. L. T. 80; 3 A. L. R. 220; In re Freehold Investment, etc., Co., 1 A. L. R. 12.

Court may direct meetings, etc. 5. The Court on the application of the company or of any creditor or person interested in the company before sanctioning any arrangement or compromise under this Act, may order such meetings to be

¹⁾ Cp. note to N. S. W. a. (No. 40 of 1899) § 160, *supra*.

summoned and inquiries to be made as it shall think fit, and may alter or vary such arrangement or compromise and impose such conditions in the carrying out thereof as it shall think just.

Shareholder transferring shares. Liability. 6. Every person who is a shareholder at the date of the holding of such meeting shall, in the event of the said person transferring his shares in the company during the term of any arrangement entered into at a meeting summoned as in the preceding sections mentioned, be liable until the end of one year after the expiration of the term of such arrangement, or until the end of three years from the date of such meeting, whichever shall first happen, to contribute to the assets of the company for the purpose of paying the creditors or class of creditors bound by the resolutions passed at the meeting an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to the holding of such meeting, in the event of the existing holder of the transferred shares being unable to satisfy the contributions required to be made for such purpose.

[§§ 7—8 relate to building societies.]

[§ 9 is repealed.]

Schedule.

Date of Act.	Title of Act.	Extent of Repeal.
1891, No. 110.	The Voluntary Liquidation Act, 1891.	The whole.

c) 56 Vic. No. 1291. An Act to amend the Law in respect of the Sale and Purchase of Shares in Banking Companies (27th February, 1893).

d) 58 Vic. No. 1380. An Act relating to the Loss or Destruction of certain Documents of Companies (29th January, 1895).

e) 60 Vic. No. 1442. An Act to amend the Companies Act Amendment Act, 1892 (7th March, 1896).

Short title. 1. This Act may be cited as the *Companies Act Amendment Act, 1896*.

Extension of power of Court to order meeting of creditors under sec. 4 of No. 1269.

2. The power given to the Court by section four of the *Companies Act Amendment Act, 1892*, to order a meeting of the creditors of a company, or any class of such creditors may be exercised although the Court shall not restrain further proceedings in any action, suit, petition, or proceeding against the company, and although no action, suit, petition, or proceeding be pending against the company, and the provisions of the said Act shall apply in such cases as fully and in the same manner as if some action, suit, petition, or proceeding against the company had been pending and had been restrained.

Company deemed to be winding up when petition presented. 3. For the purposes of section three of the *Companies Act Amendment Act, 1892*, a company shall be deemed to be in course of being wound up when a petition for the winding-up of the company has been presented, and the powers of that section shall apply not only as between the company and the creditors or any class thereof but as between the company and the members or any class thereof.

f) 60 Vic. No. 1482. An Act to further amend the Companies Act, 1890, and for other Purposes (24th December, 1896).

Short title and construction. Citation. Non-application. 1. 1. This Act may be cited as the *Companies Act, 1896*, and shall be construed as one with Part I. of the *Companies Act, 1890*, and all Acts amending such Part. **2.** This Act and

Part I. of the *Companies Act, 1890*, (hereinafter called the principal Act) and any Acts amending the same may be cited together as the *Companies Acts*. 3. This Act shall not apply to any mining company.

Interpretation. 2. [As amended by m. (No. 1886) § 5.] In this Act, unless inconsistent with the context: "Articles of association" in reference to companies incorporated outside Victoria means the rules or regulations of such company by whatever designation they are usually known. "Auditors" means all auditors or special auditors (as the case may be) appointed by or for any company or society, or if only one auditor or special auditor has been appointed then it means such auditor or special auditor. "Board" means managing body in Victoria of any company or society whether called a board of directors, committee of management, or otherwise. "Company" means any company incorporated under or subject to Part I. of the principal Act or Division I. or Division III. of this Act. "Contract" includes agreement or arrangement, whether expressed or implied, and whether written or verbal. "Court" means Supreme Court or a Judge thereof. "Director" means member of a board, and in the case of any company incorporated outside Victoria shall also mean persons being or acting in Victoria as directors of or in relation to the business of the company, but shall not in the case of any company incorporated outside Victoria mean or include persons who act only as advisers to the manager of a company and have and exercise no executive power in the management of such company. "Directors" includes board or members of any board. "Manager" includes managing director, manager, secretary, or principal executive officer by whatever designation he is styled, and also the public officer of a company or society within the meaning of subdivision 2 of Division III. of this Act. "Mining company" means any mining company under Part II. of the principal Act. "Prescribed" means prescribed by this Act or any regulation thereunder. "Proprietary company" means a company under Part I. of the principal Act which fulfils all the following requirements, namely: A) Has not more than forty members or shareholders; B) Does not receive deposits, except from its members or shareholders, for fixed periods or payable at call, whether bearing or not bearing interest; C) Does not use its title without the addition thereto immediately before the word "limited" of the word "proprietary"; D) Has filed with the Registrar-General a written notice of the fact of such addition to its name; E) Has received from the Registrar-General a certificate that in his opinion the company has duly complied with the foregoing requirements up to the date of the certificate; and F) Has published a copy of such certificate in the *Government Gazette*. "Prospectus" includes notice circular or advertisement. "Registrar-General" where used in connexion with or relating to societies shall so far only as societies are concerned be construed to mean Registrar of Building Societies; and "Society" means any society registered or deemed to be registered under the *Building Societies Act, 1890*.

Repeal. First Schedule. 3. The Acts mentioned in the first Schedule to this Act, to the extent to which the same are in and by the said Schedule expressed to be repealed, are hereby repealed accordingly.

Division I. No-liability trading companies.

No-liability system extended to companies under Part I. of principal Act. 4.

1. Where any five or more persons are associated for any lawful purpose if they subscribe their names to a memorandum of association and otherwise comply with the requirements of this Division of this Act they may be formed and registered as a company under Part I. of the principal Act on the system called the "No-liability system". 2. No company shall be so formed and registered on such system unless the words "no-liability" shall form the last words of its name. — See note to S. A. a. (No. 557) § 211.

Shareholder not liable for calls. 5. The acceptance of a share in any such company whether by original allotment or by transfer shall not be deemed a contract on the part of the person accepting the same to pay any calls in respect thereof or any contribution to the debts and liabilities of the company, and such person shall not be liable to be sued for any such calls or contributions but he shall not be entitled to a dividend upon any share upon which a call shall be due and unpaid. — S. A. a. (No. 557) 219; W. A. a. (56 Vic. No. 8) 221.

Application of principal Act to companies. 6. Subject to the foregoing provisions and also to the following qualifications, Division 1, 2, 3 and 4 of Part I. of the principal Act shall so far as they are capable of doing so apply to no-liability companies within the operation of this Division of this Act: A) It shall be necessary that one-fourth of the shares shall be subscribed for, and one-half of the subscribed capital shall be actually paid up in money prior to registration, and statutory declarations made by the manager and five shareholders verifying such subscription and such payment shall prior to such registration be filed with the Registrar-General; B) The memorandum to be lodged with the Registrar-General for the purpose of obtaining registration of any such company shall be in the form or to the effect provided in the second Schedule to this Act; and C) No provision in the said Part I. relating to the liability of members of a company shall apply to no-liability companies.

Sections 7, 39, 45, and 46 of principal Act not to apply. 7. Sections seven, thirty-nine, forty-five, and forty-six of the principal Act shall not apply to companies incorporated under the "No-liability system".

Calls to be due on second Wednesday in any month. 8. 1. The calls upon shares in every such no-liability company shall be so made and in such time and manner as to become payable on the second Wednesday in a month and on that day only, such day not to be less than nine days from the day on which the call shall be made. 2. A notice shall be printed on the face of each company's scrip stating that that day is the day on which calls are payable, and such scrip shall contain the address of the registered office of the company. 3. When a call shall have been made notice of the day when it will be payable and of the place for payment thereof shall be published in the *Government Gazette*, in a daily newspaper published in Melbourne, and in one or more newspapers circulating in any locality other than Melbourne in which the registered office of the company is situated, and eight days' notice at least shall be given on such call to each member by sending it through the post in a prepaid letter addressed to such member at his registered place of abode. — S. A. a. (No. 557) 211; W. A. a. (56 Vic. No. 8) 213. — A call for payment on an impossible day (e. g. 31st June) is invalid. — *Wood v. Freehold, etc., Co.*, 1 V. R. (E.) 168; 1 A. J. R. 173. See also the following cases decided before this Act: *Melbourne, etc., Colliery Co., v. Hodgson*, 1 W. W. & a'B. (L.) 205; *Solomon v. Collingwood Q. M. Co.*, 4 W. W. & a'B. (L.) 128; *Clunes, etc., Co. v. Coulter*, 1 V. R. (L.) 192; 1 A. J. R. 172; *Goldsborough Mining Co. v. Mc.Bride*, 3 A. J. R. 126. A promise to pay a call is sufficient evidence of receipt of notice. — *Mount Brown, etc., Co. v. Hughes*, 9 V. L. R. (L.) 383.

No call to be made until fourteen days after previous call payable. 9. When a call shall have been made no subsequent call shall be made until after the expiration of fourteen days from the day when the call so made shall be payable. — S. A. a. (No. 557) 212; W. A. a. (56 Vic. No. 8) 214.

Forfeiture of shares. 10. 1. Any share upon which a call shall at the expiration of fourteen days after the day for its payment be unpaid shall, subject to the right of redemption hereinafter contained, be thereupon absolutely forfeited without any resolution of directors or other proceeding. 2. Every forfeited share shall be sold by public auction in some public auction or stock exchange room advertised in the *Government Gazette*, in a daily newspaper published in Melbourne, and in one or more newspapers circulating in any locality other than Melbourne, in which the registered office of the company is situated, not less than seven nor more than fourteen days before the day appointed for the sale, and the proceeds shall be applied in and towards payment of the call unpaid thereon, and of the expenses of the advertisement, and of any other expenses necessarily incurred in respect of the forfeiture, and the balance (if any) shall be paid to the shareholder on his delivering to the company the scrip representing the forfeited share. — S. A. a. (No. 557) 213, 214; W. A. a. (56 Vic. No. 8) 215, 216.

Actions for recovery of forfeited shares to be commenced within six months. 11. When any share in any such no-liability company shall have been forfeited, or alleged to be forfeited, and the same is sold or offered for sale by public auction as a forfeited share no action, suit, or proceeding shall be brought or had against such company by any person claiming to be the owner or otherwise entitled to or interested in such share, unless such action, suit, or other proceeding be commenced within six months from the day when such share shall be sold or offered for sale by public auction.

Purchase of forfeited shares by directors on behalf of the company. 12. 1. Any share in any such no-liability company advertised for sale as a share forfeited for non-payment of a call may be purchased at public auction by the directors for and on behalf of such company at a price not exceeding the amount of the calls due thereon, notwithstanding that the memorandum of association of such company does not contain any provision authorizing the purchase of such shares for and on behalf of such company. 2. The shares so purchased shall be held by such directors in trust for such company and shall be disposed of in such manner as the shareholders at a general or extraordinary meeting called for the purpose may have directed, and in no other way. 3. No person shall be entitled to any vote in respect of the shares so held by the directors in trust as aforesaid. — S. A. a. (No. 557) 216; W. A. a. (56 Vic. No. 8) 218.

Sales of shares for non-payment of calls valid although specific numbers not advertised. 13. When shares in any such no-liability company are about to be sold for non-payment of any call due in respect thereof, the sale of such shares shall notwithstanding anything contained in the principal Act or in this Division of this Act be deemed to be valid although the specific numbers thereof have not been or shall not be advertised; and in every advertisement it shall be sufficient to give notice of the intended sale of such shares by advertising to the effect that all shares on which a call remains unpaid will be sold.

Postponement of sale. 14. Any intended sales of such shares of which notice has been duly given may be postponed by the manager of the company, the date of such postponement to be twice advertised in a daily newspaper published in Melbourne and in one newspaper circulating in the locality other than in Melbourne in which the registered office of the company is situated, provided that such sale shall not be postponed for more than fourteen days from the date of such first advertised intended sale, and in the event of such postponed sale the six months within which an action, suit, or proceeding may be brought against the company in respect of such share shall run from the date of the sale or the offering for sale at such postponed sale.

Redemption of forfeited shares. 15. Notwithstanding anything hereinbefore contained any person, a share belonging to whom shall have been forfeited as aforesaid, shall at any time prior to the hour of eleven o'clock in the forenoon on the day upon which it is intended to sell the share be entitled to redeem the said share by payment to the manager of all calls due thereon, and of all expenses necessarily incurred by the company in respect of the forfeiture, and of all costs and expenses of any such proceeding as aforesaid which may have been taken; and he shall thereupon be entitled to the share as if the forfeiture had not been incurred. — S. A. a. (No. 557) 215; W. A. a. (56 Vic. No. 8) 217.

Office to be open the day before sale advertised. 16. On the day previous to that on which a forfeited share is advertised for sale the company's office shall be open during the hours for which, on days when it is by the rules of the company to be open, it is by such rules to be kept open.

No-liability company not to take deposits or purchase or hold shares in other company. 17. No company formed and registered under the "No-liability system" pursuant to this Division of this Act shall receive money on deposit, or issue debentures, or carry on business as a banker or as an insurance company, or purchase or hold shares in any other company or in any society.

Directors managers or officers concerned in taking deposits personally liable. Contribution from co-directors, etc. Liability not to pass to executors, etc. 18. 1. If any company so formed and registered under the "No-liability system" receives money on deposit from any person, issues debentures, or carries on business as a banker or as an insurance company, or purchases or holds shares in any other company or any society, every director or manager who has consented to the taking of such money on deposit, or to the issue of such debentures, or to the carrying on of such business, or to the purchasing or holding of such shares shall be guilty of a misdemeanour, and in addition thereto shall also be jointly and severally liable to pay the moneys so received on deposit, or on such debentures, or owing by the company as banker or as an insurance company, and all interest thereon to the person from whom the same shall have been taken or to whom the same is owing, and the same may be recovered in any court of competent jurisdiction from such director or manager. 2. Every person who by reason of his being a director or

manager has become liable to make any payment under the provisions of this section shall be entitled to recover contribution as in cases of contract from any other person who if sued separately would have been liable to make the same payment. 3. No liability by this section imposed on any person as a director or manager of a company shall on the death of any such person extend or pass to his executors or administrators nor shall the estate of any such person after his decease be made liable under this section.

Persons not to hold shares for company. 19. Except as hereinbefore provided it shall not be lawful for any person to subscribe for or hold either directly or indirectly any shares in such company for or on behalf of such company.

Division II. Subdivision 1. Application.

Application of Division to all companies and societies. 20. Except where otherwise expressly provided this Division of this Act shall apply not only to companies under Part I. of the principal Act or under Division I. or Division III. of this Act but also to all companies (not being mining companies) or societies whatever carrying on business in Victoria; and in this Division, except where otherwise expressly provided, the word "company" shall, unless inconsistent with the context, be deemed to include society.

Subdivision 2. Constitution and incorporation of companies.

Restriction on formation of certain companies. Non-application of section.

21. 1. A company limited by shares shall not commence business or exercise any borrowing powers unless and until one-third of the shares shall have been subscribed for and one-fourth of the subscribed capital shall have been actually paid up in money or value received, and statutory declarations made by the manager and not less than two directors shall have been filed with the Registrar-General verifying such subscription and such payment, and setting forth: A) The number of shares in the company and the amount of each share; B) The amount paid up per share in money or value received; C) The number of shares subscribed for; D) The names, addresses, and occupations of the shareholders; and E) The number of shares held by each shareholder and the whole amount paid up in money or value received. 2. The Registrar-General shall on the filing of the said statutory declarations certify that the company is entitled to commence business, and such certificate shall be conclusive evidence that the company has complied with the provisions of this section. 3. Nothing in this section shall prevent any company from paying or contracting to pay any preliminary expenses, but any other contract made by a company before the date on which it is entitled to commence business shall be provisional only, and shall not be binding on the company unless adopted by the company after that date. 4. If any company commences business or exercises borrowing powers in contravention of this section, every director and manager who is a party to the contravention shall, without prejudice to any other liability, be liable to a penalty not exceeding ten pounds for every day during which the contravention continues. 5. This section shall not apply: A) To any company incorporated for the purpose of acquiring or amalgamating the assets of any company or companies which shall have been incorporated for at least twelve months, and issuing as consideration for assets so acquired or amalgamated shares fully or partly paid up, and where such shares are to be received by the liquidators under the provisions of sections one hundred and forty-six and one hundred and forty-seven of the principal Act or any statutory modification thereof; or B) To any company incorporated for the purpose of the reconstruction of an existing company under or for the purpose of any scheme of arrangement or compromise sanctioned by the court under the *Companies Acts*; or C) To any proprietary company. — E. 63 & 64 Vic. c. 48, § 6; N. Z. 99.

Annual summary. 22. 1. The summary mentioned in section twenty-seven of the principal Act shall be so framed as to distinguish between the shares issued for money and the shares issued otherwise than for money or only partly for money, and shall in addition to the particulars required by that section to be specified also specify: A) The total amount of debt due from the company in respect of all mortgages which require registration under this Act or which would require such registration if created after the commencement of this Act; and B) The names

and addresses of the persons who are the directors of the company at the date of the summary. 2. The list and summary mentioned in the said section twenty-seven shall be signed by not less than two directors and by the manager of the company. 3. In this section "mortgage" includes assignment, mortgage, charge, lien, or encumbrance.

Subdivision 3. Statements, books, and accounts.

Exemption of insurance companies. 23. This subdivision shall not apply to the life assurance business of any company which is subject to Part III. of the principal Act or to any proprietary company.

Directors and manager to keep proper books and to prepare annual shareholders' balance-sheet. 24. 1. Every company and the directors and manager thereof: A) Shall cause to be kept proper books of account in which shall be kept full true and complete accounts of the affairs and transactions of the company; and B) Shall once at least in each year and at intervals of not more than fifteen months cause the accounts of the company to be balanced and a balance-sheet (in this Act referred to as the shareholders' balance-sheet) to be prepared, which balance-sheet after being duly audited shall be laid before the members of the company in general meeting; and C) Shall cause a copy of such shareholders' balance-sheet so audited to be sent to the registered address of every member of the company at least seven days before the meeting at which it is to be laid before the members of the company, and a copy to be deposited at the registered office of the company for the inspection of the members and creditors of the company during a period of at least seven days before that meeting; and D) Shall cause to be forthwith posted up and, until the posting up of the next following balance-sheet, kept posted up a printed copy of the same in a conspicuous place in the registered office of the company and in every branch office where the business of the company is carried on, and every creditor of or shareholder in the company, or any person acting in his behalf, shall be entitled to a copy thereof on payment of sixpence. 2. [As amended by l. (No. 1699) § 12.] The shareholders' balance-sheet shall show in every case: A) The amount of share capital issued and the amount paid up thereon distinguishing the amount of share capital paid up in money and the amount paid otherwise than in money and the arrears of calls due; B) The amount of debts due by the company distinguishing the amount of mortgages, debentures, and floating charges over the general assets of the company; C) The amount of debts due to the company after making a proper deduction for debts considered to be bad or doubtful; D) Whether the assets other than debts due to the company are taken at cost price, or by valuation, or on what other basis they are stated, and whether any and if so what amount or percentage has been written off, and what other provision (if any) has been made for depreciation; E) The actual amount of the reserve fund (if any) and the mode in which it is used or invested; and F) The amount by which the gross value of the assets of the company has been increased since the last balance-sheet in consequence of any increase in the valuation of real or personal property belonging to the company. 3. [As amended by l. (No. 1699) § 12.] The shareholders' balance-sheet shall be accompanied by a certificate signed by two or more of the directors on behalf of the board stating that in their opinion the balance-sheet is drawn up so as to exhibit a correct view of the state of the company's affairs and such balance-sheet shall be in one of the forms in the third Schedule to this Act, or to the like effect. 4. In the case of any company incorporated outside Victoria, and not having its head or principal office within Victoria, the provisions of this section shall be deemed to be sufficiently complied with if the company, the directors, and manager thereof cause to be kept proper books of account of the company's Victorian affairs, transactions, business, and property, and if the manager of the company once at least in each year, and at intervals of not more than fifteen months, files with the Registrar-General a true copy signed by such manager of the latest general balance sheet of the company prepared prior to such filing, and if such balance-sheet is posted up and kept posted up in like manner as hereinbefore provided. — As to directors' liability for statements in balance sheets see *Paternoster v. Hackett*, 6 V. L. R. (L.) 232; 2 A. L. T. 24; s. c. 6 V. L. R. (L.) 396; 2 A. L. T. 77. Sections twenty-four to twenty-six and twenty-seven to thirty-five of the *Companies Act, 1896*, and any enactments amending any of such sections shall not apply to any association or institution which by licence under the hand of the Attorney-General given pursuant to sections one hundred and eighty-one and one hundred and eighty-two

of the *Companies Act, 1890*, is registered as a company with limited liability without the addition of the word "limited" to its name. — l. (No. 1699) § 10.

Reserve fund. 25. 1. No balance-sheet, summary, advertisement, statement of assets and liabilities, or other document whatsoever published, issued, or circulated by or on behalf of a company shall contain any direct or indirect representation that the company has any reserve fund unless: A) Such reserve fund is actually existing; and B) The said representation shall be accompanied by a statement showing whether or not such reserve fund is used in the business, and if any portion thereof is otherwise invested showing the manner in which and the securities upon which the same is invested. 2. Any director or manager who shall wilfully alone or in conjunction with any other person sign, publish, issue, or circulate or cause to be signed, published, issued, or circulated any balance-sheet, summary, advertisement, statement of assets and liabilities, or other document in contravention of this section shall be guilty of a misdemeanour, and, in addition to any civil responsibility, shall on conviction be liable to be imprisoned for any term not exceeding two years; and any director or manager who shall through culpable negligence alone or in conjunction with any other person sign, publish, issue, or circulate, or cause to be signed, published, issued, or circulated any balance-sheet, summary, advertisement, statement of assets and liabilities, or other document in contravention of this sub-section shall, in addition to any civil responsibility, be guilty of an offence and shall on conviction be liable to a penalty not exceeding two hundred and fifty pounds. 3. This section shall not come into operation until six months after the commencement of this Act.

Manager to verify balance sheet. 26. The manager of such company shall by a statutory declaration verify to the best of his knowledge and belief the correctness of every balance-sheet.

Subdivision 4. Audit and auditors.

[§§ 27—35 relate to the audit of companies' accounts: The provisions relating to audit do not apply to proprietary companies, or to foreign companies not having their head or principal office in Victoria. Balance-sheets in order to be deemed to be in conformity with the provisions of the *Companies Acts* must be certified to by duly appointed auditors. The certificate shall also state whether the auditors in the course of their investigations of the company's affairs have observed any breach of the *Companies Acts* committed by the company or by any officer, employe, or shareholder thereof. A copy of the certificate and shareholders' balance-sheet must be filed by the manager with the Registrar-General, and be kept posted up in the registered office of the company, and in every branch office. An auditor or auditors shall be appointed at each annual general meeting, and the remuneration is to be fixed at the same time. No director, manager, officer or employe of the company is ligible to appointment as auditor during his continuance in office or for twelve months afterwards, nor may any debtor of the company act as such. No person may act as auditor unless he has been duly licensed by the Auditors' Board. The Acts sets forth the qualifications necessary. The manager of every company shall cause every auditor immediately on his appointment to be supplied with a list of all books kept by the company and also with a copy of the shareholders' balance-sheet as soon as the same is prepared. The directors, manager and officers of every company shall give such information and produce to the auditors and the auditors shall have access to all such books accounts, securities, vouchers, papers, writings and documents in their custody or power as the auditors or any one of them may require. Provided that if a company has branch establishments it shall so far as regards access to the books accounts securities vouchers papers writings and documents of any such branch be sufficient that the access is allowed to such of the same or such copies thereof or extracts therefrom as may have been transmitted from such branch to the head office of the company in Victoria. The auditors of every company: a) Shall use reasonable diligence with the view of ascertaining that the books of the company have been properly kept and record correctly the affairs and transactions of the company; b) Shall examine the shareholders' balance-sheet and any accounts presented to the members of the company, and shall report in writing to the members of the company that, so far as the auditors are in a position to form an opinion, the balance-sheet and accounts have been drawn up in accordance with the provisions of the *Companies Acts*, and when taken

together with any explanations attached thereto, present a correct view of the state of the company's affairs; or if the auditors are unable to make such a report shall report in writing in what respects the balance-sheet and accounts fail to comply with these requirements, and shall sign a certificate at the foot of the balance-sheet stating whether or not all their requisitions as auditors including their requisitions with regard to the private balance-sheet hereinafter mentioned have been complied with; and c) Shall report in writing to the members all material information which they have observed or have become acquainted with with regard to the books, accounts securities vouchers papers writings and documents examined by them. If the auditors or any one of them think there is just cause to disapprove of any part of the said accounts presented to the members of the company they or any one of them may disallow any part of the said accounts so disapproved of and shall report their or his disapproval in writing on the accounts and balance-sheet. Every such report and balance-sheet shall if any member present so desire be read before the company in general meeting. Auditors wilfully certifying a false balance-sheet are civilly responsible and are also guilty of misdemeanour. The auditors shall require that the private balance-sheet be furnished them upon which to base their balance-sheet, and may require any information regarding items of the private balance-sheet. A duplicate of such private balance-sheet must be deposited with the Registrar-General in a sealed envelope, which may not be opened, except under special circumstances and under an order of the Court. Officers of the company contravening the provisions of this subdivision are guilty of a misfeasance within section one hundred and thirty-five.]

Subdivision 5. Special audit.

[§§ 36—43 relate to special audit. They do not apply to proprietary companies. The Court may at any time if it thinks fit upon the application on notice to the company of members not indebted to the company holding not less than one-tenth part in number and value of the whole shares of the company for the time being issued, and upon proof that an application in writing by such members to the directors for a special audit by an auditor or auditors to be appointed by the Court has either been consented to in writing by the directors or has not been granted within fourteen days from the date of such application, and either with or without any conditions as to the deposit of money or otherwise as security for costs and expenses as it may think just, by order appoint for any company one or more auditors who shall be called "special auditors". No order of the Court granting or refusing any such application shall be subject to appeal. Such special auditors shall make a special audit of the accounts of the company, and for that purpose the directors must cause the accounts to be balanced as in the case of ordinary audits. The special auditors shall report to the Court the result of their audit and also state whether, in their opinion, any organizer, promoter, director, manager, employe, auditor, or shareholder has been guilty of any breach of trust of misfeasance in relation to the company, and whether there has been any breach of the *Companies Acts*. The persons named are entitled to be heard to give an explanation of their acts. The special auditors are empowered to summon witnesses and to require the production of documents. The expenses of such special audit shall be paid out of the money deposited as security, or by such person or persons as the Court may designate.] — Cp. N. Z. § 137—139.

Subdivision 6. Dealing in or advance on shares.

Company not to lend money on its own shares, etc. Liability of directors, etc. Contribution from co-directors, etc. Liability not to pass to executor, etc. Past liens not affected. Building societies not affected. 44. 1. Except as provided in the *Companies Acts* in regard to forfeited shares, no company shall either directly or indirectly purchase, or deal in, or lend money, or make advances, or allow discounts upon the security or pledge of its own shares, or lend money, or make advances, or allow discounts upon the security or pledge of its own debentures or debenture stock, nor shall any company have a charge on any share in the company belonging to a shareholder other than a charge for the call or calls due on any share in such company belonging to him. 2. All directors, managers, and officers who consent to any act in contravention of this section shall be jointly and severally liable to repay and otherwise make good to the company all moneys expended, lent, or

advanced by the company contrary to the provisions hereof. 3. Every person who by reason of his being a director, manager, or officer has become liable to make any payment under the provisions of this section shall be entitled to recover contribution as in cases of contract from any other person who if sued separately would have been liable to make the same payment. 4. No liability by this section imposed on any person as a director, manager, or officer shall on the death of any such person extend or pass to his executors or administrators, nor shall the estate of any such person after his decease be made liable under this section. 5. Nothing herein contained shall affect any lien or charge existing before the commencement of this Act, or shall prevent any company from lending money or making advances or allowing discounts upon the security or pledge of its own debentures or debenture stock, or paying off, or purchasing or redeeming any of its debentures or debenture stock where by any scheme of compromise or arrangement heretofore sanctioned by the Court or declared by any Act of Parliament to be valid and binding such loan or advance or discount, or the right to pay off or purchase or redeem any of its debentures or debenture stock, as the case may be, is expressly permitted. 6. This section shall not apply to the borrowing shares of any building society. — As to the general fiduciary character of directors, see § 102—120, *infra*; *Smith v. Harrison*, 3 A. J. R. 44. *Australasian Boot Co. v. Thomson*, 3 A. J. R. 96; *Hardy v. Phenix Foundry Co.*, 7 V. L. R. 211; 3 A. L. T. 5; *Reeves v. Croyle*, 2 V. R. (E.) 42; 2 A. J. R. 13; *Gray v. Stevenson & Sons*, 25 V. L. R. 476; *In re O'Brien*, 21 V. L. R. 100; 16 A. L. T. 163; *Montgomerie's Brewery Co. v. Blyth*, 27 V. L. R. 175; 23 A. L. T. 37; 7 A. L. R. 182.

[§ 45 prohibits banking companies and their officers from granting advances or discounts to their officers or to firms of which such officers are members.]

Subdivision 7. Advance to directors etc.

[§ 46 relates to returns to be filed with Registrar-General by banking companies as to advances to their directors and other officers, or to firms of which such persons are members.]

Subdivision 8. Misleading Statements.

Penalty on company publishing misleading statements. 47. If any company advertises, circulates, or publishes any written or printed statement of the amount of its capital which is misleading, or in which the amount of nominal or authorized capital is stated without the words “nominal” or “authorized”, or in which the amount of capital or authorized or subscribed capital is stated, but the amount of paid-up capital or the amount of any mortgage or charge on uncalled capital is not stated, every such company and every director or manager authorizing directing or consenting to such advertising, circulation, or publication shall be guilty of an offence against this Act.

Subdivision 9. Dividends and premiums.

Dividends payable from profits only. Directors or manager paying dividends otherwise to be personally liable. Contribution. 48. 1. No dividend shall be payable to the shareholders of any company except out of the profits arising from the business of such company. 2. If any director or manager of a company wilfully pays or permits to be paid any dividend out of what he knows is not such profits he shall, without prejudice to any other liability, be liable to a penalty not exceeding five hundred pounds, and, in default of payment thereof, to imprisonment for any term not exceeding twelve months and shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent that the dividends so paid shall have exceeded the profits, and such amount may be recovered by the creditors or the liquidator suing on behalf of the creditors. 3. If the whole amount be recovered from one director or from the manager he may recover contribution against any other person liable as aforesaid who has directed or consented to such payment. 4. No liability by this section imposed on any person as aforesaid shall on the death of such person extend or pass to his executors or administrators, nor shall the estate of any such person after his decease be made liable under this section. 5. In this section the word “dividend” or “dividends” includes a bonus or bonuses or a payment or payments by way of bonus.

Restriction on the issue of shares at a premium. 49. 1. The directors of any company shall not make a first or any issue of shares in such company at a pre-

mum until the company shall have been established at least twelve months. 2. Where shares are issued at a premium such premium when actually received by the company in money shall be carried to the credit of a reserve fund. — For a decision on the point involved, rendered before this Act, see *Reeves v. Croyle*, 2 V. R. (E.) 42 2 A. J. R. 13; *Mackie v. Clough*, 17 V. L. R. 493, 13 A. L. T. 122. But it has been held (1890) that dividends may be paid out of profits even where the assets of the company are of less value than the original capital. — *Phillips v. Melbourne, etc.*, *Soap Co.*, 16 V. L. R. 111; 11 A. L. T. 148.

Subdivision 10. Use of "Saving" or "Savings", etc.

Company and person not to use word "savings", etc., in connexion with business.

50. 1. No company whether registered before or after the commencement of this Act shall assume or use or continue to assume or use the word "saving", or "savings", or the words "savings bank" or "savings institution", or words of like import as part of this name or designation, and no such word or words shall be or be deemed to be part of the name or registered title of any company. 2. No person or firm not incorporated shall assume or use or continue to assume or use any of the said words or words of like import in connexion with the trade or business designation or title of such person or firm. — See also p. (No. 2156) § 2, *infra*.

Restriction on use of title "banking company", etc. Penalty. 51. 1. No company whether registered before or after the commencement of this Act shall assume or use the title of "bank", "banking company", "banking house", "banking association", or "banking institution" or words of like import as part, nor shall any such words be or be deemed to be part of its name or designation, unless such company has subscribed capital of not less than two hundred thousand pounds, and a paid-up capital of not less than seventy-five thousand pounds, provided that any company registered before the commencement of this Act may continue to retain and use any of the aforesaid titles, if within twelve months from such commencement it has a subscribed capital of not less than two hundred thousand pounds and a paid-up capital of not less than seventy-five thousand pounds. 2. No person or firm not incorporated shall assume or use, or continue to assume or use, the title of "bank", "banker", "banking company", "banking house", "banking association", or "banking institution", or words of like import in connexion with the trade or business of such person or firm. 3. No company shall assume or use the word "proprietary" as part of its title until and unless it shall have complied with all the requirements required by this Act to be fulfilled by a proprietary company. 4. No company shall use the word "proprietary" as part of its title if at any time after having become a proprietary company it shall have failed to fulfil any of the requirements required by this Act to be fulfilled by any proprietary company. 5. Every company and every director or manager of a company, and every person, and every member of any firm guilty of committing, causing, directing, or authorizing a breach of either this or the last preceding section shall be guilty of an offence and shall be liable to a penalty not exceeding ten pounds for every day such breach continues.

Subdivision 11. Evidence.

Certificate of Registrar-General evidence of incorporation. Deputy Registrar-General. 52. 1. Any copy of or extract from any documents or parts of documents in relation to companies filed, kept, recorded, or registered at the office of the Registrar-General, if duly certified to be a true copy under the hand of the Registrar-General, shall in all legal proceedings, civil or criminal, and in all cases whatsoever be received in evidence as of equal validity with the original document or part. 2. All courts and all persons having by law or by consent of parties authority to hear, receive, and examine evidence shall take judicial notice of the signature of every person who is, or shall be, or shall have been Deputy Registrar-General, provided that such signature be attached to any certificate or other official document under the *Companies Acts*. — E. § 243. See note to N. S. W. a. (No. 40 of 1899) § 17. Cp. § 164, *infra*.

Subdivision 12. Mortgages.

Registration of mortgages and charges. Mortgages to be registered within thirty days. Mortgage to be created only pursuant to a special resolution. Duty of directors or manager to register mortgages. Register to be kept and to be open to inspection, etc. Mode of registering certain debenture charges. Where more than one series of debentures. Mortgage of uncalled capital, etc., not to be registered until after public

notice. Fees. Caveat may be entered and notified. Court to decide caveat. Power of caveator to withdraw caveat. Consequences of entering caveat without reasonable cause. Registration not rendered invalid by unimportant accidental omissions. Rectification of accidental omission or misstatement in register. Entry of satisfaction. Penalties on directors. Meaning of "creditor", "mortgage", etc. 53. 1. Every mortgage created by a company after the commencement of this Act, and being: A) A mortgage of uncalled or unpaid capital of the company; or B) A mortgage of any other property created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale or under the *Book Debts Act, 1896*; or C) A mortgage for the purpose of securing any issue of debentures; or D) A floating mortgage on the undertaking or property of the company, not being a mortgage subject to any other part of this sub-section, and not being a lien by law or a mortgage created in the ordinary course of business, shall be subject to the following provisions of this section. 2. [As amended by l. (No. 1699) § 13.] No such mortgage shall be operative or have any validity at law or in equity unless the same be in writing, and unless the same be registered in the office of the Registrar-General by lodging in such office the mortgage or a copy thereof accompanied by an affidavit of the execution of the mortgage, and in the case of a copy also verifying it as a true copy of such mortgage. Such mortgage or copy shall be so lodged within thirty days after the date of the creation of such mortgage or if it is executed in any place out of Victoria then within thirty days after the time at which it would in the ordinary course of post arrive in Victoria, if posted within ten days after the execution thereof. For such registration there shall be paid to the Registrar-General such fee as may be prescribed. 3. No mortgage created by a company of its uncalled or unpaid capital shall be operative or have any validity at law or in equity unless previously authorized by a special resolution of such company passed and confirmed in the manner provided in the principal Act. 4. It shall be the duty of the directors and manager of a company to cause to be registered every mortgage created by such company and requiring to be registered under this section and for that purpose to supply the Registrar-General with the required particulars; but any such mortgage may be registered on the application of any person interested therein. 5. The Registrar-General shall cause a register book to be kept wherein every mortgage created by a company in respect to which the provisions of this section have been complied with shall be entered, and wherein every notice of intention to register a mortgage and every caveat under this section shall be entered, and such register and the documents and notices therein entered shall be open to the inspection of all persons on payment of such fees as may be prescribed. The Registrar-General shall keep an index of such register in such manner and form as may be prescribed. 6. Where a series of debentures containing any mortgage to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient to enter on the register: A) The total amount secured by the whole series; and B) The dates of the resolutions creating the series and of the covering deed (if any) by which the security is created or defined; and C) A general description of the property mortgaged; and D) The names of the trustees (if any) for the debenture-holders. 7. Where more than one issue is made of debentures in the same series, the company may require the Registrar-General to enter on the register the date and amount of any particular issue, but an omission to do this shall not affect the validity of the debentures issued. 8. No mortgage of (A) uncalled or unpaid capital of the company, or (B) any other property created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale or under the *Book Debts Act, 1896*, shall be registered unless fourteen days before registration thereof notice of intention to register the same in the form or to the effect contained in the first Part of the fourth Schedule to this Act be lodged at the office of the Registrar-General and advertised in two daily newspapers published in Melbourne, and in some newspaper generally circulating in the locality, if other than Melbourne, where the registered office of the company is situated, nor until such mortgage or a copy thereof verified as hereinbefore provided and also an affidavit of compliance with the provisions of this section have been lodged with the Registrar-General. 9. Upon every such lodgment there shall be paid to the Registrar-General such fees as may be prescribed. 10. Any creditor of such company may at any time within fourteen days from the day on which notice of

intention shall be lodged enter a caveat against the registration of a mortgage as being prejudicial to or likely to hinder, defeat, or delay the claims of such creditor, and every such caveat shall be in the form or to the effect in the second Part of the fourth Schedule to this Act, and no such mortgage shall be registered until such caveat be removed or withdrawn. 11. Such caveat shall be notified by the Registrar-General to the company so intending to register such mortgage and to the proposed mortgagee. 12. Such company or proposed mortgagee may summon the said caveator to appear before the Court to show cause why such caveat should not be removed, and the Court may either decide the question raised or may direct an issue which shall be tried in the usual way of an action in the Court, and the Court when deciding the question without an issue, or on trying the issue, shall have power to order the removal of such caveat with or without costs, or to refuse to make such order with or without costs, and the question raised shall be whether the proposed mortgage will be prejudicial or likely to hinder, defeat, or delay the claims of such caveator. 13. The caveator may before the issue of the summons aforesaid withdraw the caveat without leave. After the issue of the summons the caveator may withdraw the caveat either with the written consent of the company and the proposed mortgagee or by leave of the Court on application thereto and upon such terms as to costs as the Court may think fit. The withdrawal shall be in the form of a notice by such caveator to the Registrar-General stating that the caveator withdraws the said caveat. 14. Any person not a creditor entering a caveat without reasonable cause for considering himself to be a creditor, and any caveator refusing without reasonable cause to sign an application for withdrawal of his caveat after satisfaction of his debt shall be liable to pay the company or proposed mortgagee such sum by way of compensation as the Court upon the hearing of any such summons may deem just and may order. 15. The registration of a mortgage in pursuance of this section shall not be invalid merely by reason of any accidental or inadvertent omission or misstatement in the copy lodged as aforesaid, provided that the same substantially discloses the nature of the security and that such omissions or misstatements are not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage. 16. The Court on being satisfied that the omission or misstatement of any particular with respect to any such mortgage was accidental or due to inadvertence, and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage may, on the application of any person interested, and on such terms and conditions as seem to the Court just and expedient, order that such omission or misstatement be rectified. 17. The Court may, on evidence being given to its satisfaction that the debt, demand, claim, or liability for which any registered mortgage was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register. 18. If any director or manager of a company makes default in complying with the requirements of this Act as to the registration of any mortgage created by such company he shall, without prejudice to any other liability, be liable on summary conviction to a penalty not exceeding fifty pounds. 19. In this and the following section: A) "Creditor" means any person to whom the company is indebted on any account whatsoever at law or in equity on the balance of account or otherwise, and whether the debt is due or to accrue due, or secured or unsecured; B) "Mortgage" includes assignment, mortgage, charge, lien, or encumbrance; C) "Mortgaged" includes assigned, mortgaged, or charged, or subjected to any lien or encumbrance; and D) "Mortgagee" includes assignee, mortgagee, lienee, and the person entitled to the benefit of any charge or encumbrance. — This section is amended by m. (No. 1886) § 2, *infra*. — See a. (No. 1074) § 43, and note thereto. — Mortgages on chattels having their actual situs in Victoria, executed in England by a company there domiciled, must, in order to give to the mortgagee a title superior to that of a person who has seized them under a warrant of execution, be registered in conformity with this section. — *Hockey v. Mother of Gold Consolidated Mines*, 29 V. L. R. 196, 25 A. L. T. 32, 9 A. L. R. 163. A bill of sale given by a company need not be registered under Part VI. of the *Instruments Act*, 1890. — *In re Eggleston & Eggleston*, 28 V. L. R. 111, 23 A. L. T. 247, 8 A. L. R. 127.

Effect of subsequent mortgages in certain cases. 54. Where a mortgage requiring registration under this Act is created within or on the expiration of thirty days after the creation of a prior unregistered mortgage and comprises all or any part of the property comprised in the prior mortgage, and the subsequent mortgage is given as a security for the same debt as is secured by the prior mortgage,

or for any part of such debt, then to the extent to which such subsequent mortgage is a security for the same debt or part thereof, and so far as respects the property comprised in the prior mortgage, such subsequent mortgage shall not be operative or have any validity at law or in equity, unless it is proved to the satisfaction of the Court having cognizance of the case that the subsequent mortgage was given in good faith for the purpose of correcting some material error in the prior mortgage, and not for the purpose of evading this Act.

Subdivision 13. Statutory meeting.

First meeting of company. 55. 1. Every company limited by shares or formed on the no-liability system, and formed after the commencement of this Act, shall within two months after the date of the registration of the company hold a general meeting of the members of the company which shall be called the statutory meeting. 2. The directors shall at least seven days before the day on which the meeting is held forward to every member of the company a report certified by not less than two directors of the company, and stating: A) A list of the shareholders with the number of shares allotted to each, distinguishing shares allotted as fully or partly paid up otherwise than in money, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted; B) The total amount of money received by the company in respect of such shares distinguished as aforesaid; C) An abstract of the receipts and payments of the company to the date of the report, and an account or estimate of the preliminary expenses of the company; D) The names, addresses, and occupations of the directors, auditors (if any), and manager (if any) of the company; E) The dates, parties, and short purport or effect of every contract, whether absolute or provisional, made with any promotor of, or vendor to, or contractor with the company, and the amount or mode of any payment made, or to be made, in respect of any such contract and not disclosed in the prospectus, and the particulars of any proposed modification of any such contract; and F) That the directors have not any reason to question the good faith of the undertaking or the truth of the statements in the prospectus and that so far as they have had an opportunity of judging they are satisfied with the position of the company and believe that the capital subscribed in good faith is sufficient for the purposes of its undertaking, or if they can not so report then the conclusions at which they have arrived with respect to the position and prospects of the company, and the course which they suggest should be taken by the company with reference thereto. 3. The report shall so far as it relates to the shares allotted by the company, and to the money received in respect of such shares, and to the receipts and payments of the company, be certified as correct by the auditors (if any) of the company. 4. The directors shall cause a copy of the report, certified as by this section required, to be filed with the Registrar-General forthwith after the sending thereof to the members of the company. 5. The directors shall cause a list showing the names, descriptions, and addresses of the members of the company and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting. 6. The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation or the business of the company, whether previous notice of that matter has been given or not. 7. The meeting may by extraordinary resolution, of which no notice shall be required, appoint a committee or committees of inquiry, and may adjourn from time to time, and at any such adjourned meeting an extraordinary resolution may be passed that the company be wound up, provided that no such extraordinary resolution shall be proposed unless at least seven days' notice of the intention to move the same shall have been given by the chairman of the meeting in writing to every member of the company. 8. If the statutory meeting is not held within the time required by this section, the company shall be liable to a penalty not exceeding five pounds a day for every day from the date at which it ought to be held until the date at which it is held, and every director or manager of the company, or, in the event of there being no directors, every subscriber of the memorandum of association who knowingly authorizes or permits such default shall be liable to the same penalty. — See note to N. S. W. a. (No. 40 of 1899) § 242.

Subdivision 14. Extraordinary general meeting.

Extraordinary general meeting. 56. 1. Notwithstanding anything in any regulations of a company, the directors of a company shall on the requisition of the holders of not less than one-tenth of the issued capital of the company forthwith proceed to convene an extraordinary general meeting of the company. 2. The requisition shall state the objects of the meeting and shall be signed by the requisitionists and deposited at the office of the company. It may consist of several documents in like form, each signed by one or more of the requisitionists. 3. If the directors of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after six months from the date of such deposit. 4. If at such meeting a resolution capable of being confirmed as a special resolution is passed the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution, and if thought fit of confirming it as a special resolution, and if the directors do not convene the meeting within seven days from the date of the passing of the first resolution the requisitionists, or a majority of them, may themselves convene the meeting. 5. Any meeting convened under this section shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors. — Cp. notes to N. Z. §§ 89, 90. Where the object of the meeting is to decide "as to the winding-up of the company" it is not competent to adopt a resolution to empower the directors to sell the assets of the company. — *Hick v. Havilah G. M. Co., 4 W. W. & a'B. (E.) 87.*

Subdivision 15. Extraordinary resolutions.

Registry of extraordinary resolutions. 57. When any extraordinary resolution is passed by any company within the meaning of Part I. of the principal Act, a copy thereof shall be printed and forwarded to the Registrar-General and be recorded by him. If such copy is not so forwarded within fifteen days from the date of the passing of the resolution, the company and the manager thereof shall each incur a penalty not exceeding ten shillings for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded. — See note to a. (No. 1074) § 54.

Subdivision 16. Allotment.

Restrictions as to allotment. 58. 1. No allotment shall be made of any share capital of a company unless: A) The amount (if any) fixed by the memorandum or articles of association, or named in the prospectus (if any), as the minimum subscription upon which the directors may proceed to allotment, or B) If no amount is so fixed and named then the whole amount of the share capital, has been subscribed, and the sum (if any) payable on application for the amount so fixed and named, or for the whole amount subscribed, has been paid to and received by or on behalf of the company. 2. The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in money, and is in this Act referred to as the minimum subscription. 3. If the conditions aforesaid have not been complied with on the expiration of three months after the first issue of the prospectus all money received from applicants for shares shall be forthwith repaid to the applicants without interest, and if any such money is not so repaid within four months after the issue of the prospectus, or such further time as may be specifically named in the prospectus, the directors or proposed directors of the company shall be liable to the same extent as trustees to repay such money with interest at six pounds per centum per annum. 4. All moneys paid to and received by the company before and until the minimum subscription is fully paid up shall by the promoters and directors or proposed directors be deposited with some bank of issue in a separate and distinct account in the name of the Registrar-General in trust for the proposed company. The Registrar-General shall upon the lodgment with him of a statutory declaration by the directors of the company, or any two of them, that the minimum subscription has been paid to and received by or on behalf of the company, cause the said money to be paid over to the company; but if such minimum subscription is not so received by the company within three months after the first issue of the prospectus and such statutory declaration lodged as aforesaid, then he shall forthwith cause such money to be returned to the directors or proposed directors of the proposed company who

shall within four months after the issue of the prospectus, or such further time as may be specifically named in the prospectus, repay the same to the applicants as aforesaid. Any person contravening the provision of this sub-section shall be guilty of a misdemeanour, and on conviction shall be liable to imprisonment for any term not exceeding twelve months, and to repay to any applicant for shares the full amount subscribed by him with interest thereon at the rate of six pounds per centum per annum. 5. The provisions of this section shall not be waived by any applicant or person. — E. § 85; S. A. a. (No. 557) 226; W. A. a. (56 Vic. No. 8) 226; N. Z. 95. — A person may be estopped from denying that he has accepted an allotment. — *Legal and General, etc., Co. v. Gill*, 4 V. L. R. (L.) 204.

Return as to allotments. 59. 1. Whenever a company limited by shares or a company formed and registered on the no-liability system makes any allotment of shares, the directors and manager shall within seven days thereafter send to the Registrar-General a return of the allotments, stating: A) The number and nominal amount of the shares comprised in the allotment, the names, addresses, and occupations of the allottees, and the amount (if any) paid on each share; and B) The number and amount of shares allotted as fully or partly paid up otherwise than in money, and in the latter case the extent to which they are so paid up, and in either case the consideration for which such shares have been allotted. 2. Every director or manager who is guilty of a contravention of any of the provisions of this section shall be liable to a penalty not exceeding fifty pounds for every day during which the default continues.

Subdivision 17. Miscellaneous.

[§ 60 relates to companies formed for purposes not of gain.]

Division III. Subdivision 1. Branch Register.

Power for companies to keep branch registers. 61. Any company may, if authorized so to do by its regulations or by special resolution, cause to be kept in any country or colony other than Victoria a branch register or registers of the members resident in such place. — E. § 34; N. S. W. a. (No. 40 of 1899) 26; Q. f. (53 Vic. No. 18) 32 (1); N. Z. 111 (1). Cp. 61 Vic. No. 1497, providing for the keeping of branch registers of no-liability mining companies.

Company to give Registrar-General notice of office where branch register kept. 62. The company shall give to the Registrar-General notice of the situation of the office where any such branch register is kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued. — E. § 34; N. S. W. a. (No. 40 of 1899) 26; Q. f. (53 Vic. No. 18) 32 (2).

Foreign register to be deemed part of company's register. 63. A branch register shall as regards the particulars entered therein be deemed to be a part of the company's register of members, and shall be *prima facie* evidence of all particulars entered therein. — E. § 35 (1); N. S. W. a. (No. 40 of 1899) 27 (1); Q. f. (53 Vic. No. 18) 32 (3); N. Z. 113.

Mode of keeping register. 64. Any such register shall be kept in the manner provided by the principal Act with this qualification that the advertisement mentioned in section thirty-four of the principal Act shall be inserted in some newspaper circulating in the neighborhood of the place wherein the register to be closed is kept. — E. § 35 (2); N. S. W. a. (No. 40 of 1899) 27 (2); Q. f. (53 Vic. No. 18) 32 (4); N. Z. 111 (2).

Company to transmit to registered office copy of entries in branch register. 65. The company shall transmit to its registered office a copy of every entry in its branch register or registers as soon as may be after such entry is made, and the company shall cause to be kept at its registered office duly entered up from time to time a duplicate or duplicates of its branch register or registers. The provisions of section thirty-three of the principal Act shall apply to every such duplicate, and every such duplicate shall for all the purposes of the principal Act be deemed to be part of the register of members of the company. — E. § 35 (3); N. S. W. a. (No. 40 of 1899) 29; Q. f. (53 Vic. No. 18) 32 (5); N. Z. 112.

Shares in branch register to be distinguished from those in principal register. 66. Subject to the provisions of this Division of this Act with respect to the duplicate register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any

shares registered in a branch register shall during the continuance of the registration of such shares in such branch register be registered in any other register. — E. § 35 (4); N. S. W. a. (No. 40 of 1899) 30; Q. f. (53 Vic. No. 18) 32 (6); N. Z. 113.

Company may discontinue branch register. 67. The company may discontinue to keep any branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same country or colony or to the register of members kept at the registered office of the company. — E. § 35 (5); N. S. W. a. (No. 40 of 1899) 31; Q. f. (53 Vic. No. 18) 32 (7); N. Z. 115.

Company may make regulations as to keeping of branch registers, etc. 68. Subject to the provisions of this Division of this Act, any company may by its regulations or by special resolution make such provisions as it may think fit respecting the keeping of branch registers and for providing that certificates for shares on such register need not be under the common seal of the company but may be signed in such manner as the directors of the company may determine. — E. § 35 (6); N. S. W. a. (No. 40 of 1899) 32; Q. f. (53 Vic. No. 18) 32 (9); N. Z. 117.

"Company" includes companies incorporated under any Victorian Act. 69. In this subdivision of this Division of this Act the word "company" shall apply not only to companies under Part I. of the principal Act, but also to all companies (not being mining companies) incorporated by or under any Act of the Legislature of Victoria.

Subdivision 2. Foreign companies and societies.

Company formed out of Victoria to register name of agent and situation of office. 70. 1. Every company or society whatever formed or incorporated in any country or colony other than Victoria, and carrying on business in Victoria, shall within twelve months from the commencement of this Act or before commencing to carry on business in Victoria register its name and a copy of its memorandum and articles of association or any like document, and the name and place of abode or business of the person appointed by such company or society to carry on the business of such company or society in Victoria, and also the situation of the principal office of such company or society in Victoria, and the person so registered shall be deemed to be the agent of such company or society, and shall be called the public officer of the company or society, and such office shall be the registered office of such company or society for the purposes of this Act. Every company or society which fails to comply with this provision and any person carrying on in Victoria the business of any such company or society which has failed to comply with such provision shall be liable to a penalty not exceeding five pounds for every day during which business shall be carried on. 2. Every such public officer as aforesaid shall be answerable for the doing of all such acts, matters, and things as are required to be done by such company or society by virtue of this Act, and shall, unless he prove some reasonable excuse, be personally liable to all penalties imposed on such company or society for any contravention of any of the provisions of this Act. 3. [As amended by l. (No. 1699) § 11, *infra*.] A company or society formed or incorporated in any country or colony other than Victoria and not carrying on in Victoria by an agent any business other than selling goods, wares, or merchandise shall not be required to do any of the acts, matters, and things prescribed in this Act, except such as are required by this subdivision. — E. § 274; N. S. W. c. (No. 22 of 1906) 7 (1, 2); T. f. (59 Vic. No. 17) 5 (1—5); S. A. a. (No. 557) 3, 196, 201, b. (No. 576) 3; Q. l. (59 Vic. No. 2) 3—7; W. A. a. (56 Vic. No. 8) 198; N. Z. 298, 299. — As to winding-up see note to a. (No. 1074) § 183, *supra*. As to mortgage of property situated in Victoria, see note to § 53, *supra*. As to security for costs where plaintiff is a foreign company in liquidation, see *Acetyline Gas Co. v. Markwald*, 27 V. L. R. 301; 23 A. L. T. 54; 7 A. L. R. 210. As to ancillary local liquidation of a company registered abroad, see *In re Russell Wilkins & Sons*, 11 A. L. R. (C. N.) 26. As to priorities under § 148 see note to that section, *infra*. A foreign company registered under this Act may be wound up in Victoria. — *In re Egerton & Gordon C. G. M. Co.*, (1908), V. L. R. 22. For restriction on the names of foreign companies see p. (No. 2156) § 2, *infra*. A foreign company that merely employs a commercial traveller to solicit orders in Victoria, and forward them to the company abroad, does not carry on business in Victoria. — *Pearce v. Tower Mfg. Co.*, 24 V. L. R. 506; 20 A. L. T. 230; 5 A. L. R. 88.

Mode of registration. Copy of memorandum and articles to be recorded in the office of the Registrar-General. 71. 1. The registration of the name of such company or society, agent, and office shall be effected in the following manner: The attorney or agent of such company or society shall make and sign a statutory declaration in the form in the fifth Schedule to this Act, or to the like effect,

before a justice and such declaration when so made and signed shall be filed with the Registrar-General. 2. Such statutory declaration shall be accompanied by a copy of the memorandum of association and articles of association of the company or society, attested by the public officer for the time being of such company or society to be a true transcript of the original memorandum of association and articles of association respectively of such company or society, and such memorandum of association and articles of association shall be registered in the office of the Registrar-General, and the same shall be open for inspection at all reasonable times by any person requiring to inspect the same. — E. § 274; N. S. W. c. (No. 22 of 1906) 7 (3, 4); T. f. (59 Vic. No. 17) 10, 13; S. A. a. (No. 557) 196 (4), 202; Q. l. (59 Vic. No. 2) 3, 4; W. A. a. (56 Vic. No. 8) 198, 202; N. Z. 300.

Proof of registration. 72. [As amended by l. (No. 1699) § 11, *infra*.] A certificate in the form or to the effect in the sixth Schedule to this Act, purporting to be under the hand of the Registrar-General (who is hereby required to give such certificate to any person applying for the same on payment of the prescribed fee), and which shall set forth the name of the company or society and of the agent of and the situation of the principal office of the company or society in Victoria, shall be *prima facie* evidence in all courts that such company or society is formed or incorporated, that the person named therein as agent is the agent of such company or society in Victoria, and that the office of such company or society in Victoria is situate as therein stated, and that such company or society, agent, and office have been duly registered under the provisions of this Division of this Act, and of the time of registration, and of all particulars mentioned in such certificate. — N. S. W. c. (No. 22 of 1906) 11; T. f. (59 Vic. No. 17) 15, g. (62 Vic. No. 26) 10, 15, 19; S. A. a. (No. 557) 197, 198, 204; Q. l. (59 Vic. No. 2) 6, 10; W. A. a. (56 Vic. No. 8) 206, b. (60 Vic. No. 2) 4; N. Z. 303, 308. See note to a. (No. 1074) § 18.

Notice of removal of office or substitution of agent to be given. 73. When and so often as any such registered office shall be removed or any other person shall be substituted for the registered agent of such company or society, the like declaration and notice shall be made and given as is hereinbefore required with reference to the registration of a company or society, and if the requirements of this section shall not be complied with such company or society, and every person carrying on the business of such company or society, which has failed to comply with such provision, shall be liable to a penalty not exceeding five pounds for every day during which the business is so carried on. — N. S. W. c. (No. 22 of 1906) 12; T. f. (59 Vic. No. 17) 12, g. (62 Vic. No. 26) 16; S. A. a. (No. 557) 203; Q. l. (59 Vic. No. 2) 8; W. A. a. (56 Vic. No. 8) 202; N. Z. 302 (2, 5).

Service of notices, etc. 74. All communications and notices may be addressed to such registered office of such company or society, and service of any notice or legal process at such office or on the agent of the company or society whose name is registered pursuant to this Division shall be deemed to be service upon the company or society. — E. § 274 (2); N. S. W. (No. 22 of 1906) 13; T. f. (59 Vic. No. 17) 5 (5), 14, g. (62 Vic. No. 26) 17; S. A. a. (No. 557) 203; Q. l. (59 Vic. No. 2) 8, 9; W. A. a. (56 Vic. No. 8) 205; N. Z. 302. — Cp. *Kelly v. Queen's Birthday N. G. M. Co.*, 21 V. L. R. 335, 17 A. L. T. 8.

Certain companies exempted. 75. No company shall be deemed to be carrying on business within the meaning of this Act by reason only of its investing its funds or other property in Victoria. — N. S. W. c. (No. 22 of 1906) 14. — See note to § 70, *supra*.

Division IV. Alteration of objects or constitution of a company.

Meaning of "creditor". 76. In this Division the word "creditor" includes holder of debentures or debenture stock.

Power for company to alter objects or form of constitution subject to confirmation by Court. 77. Subject to the provisions of this Act, a company may by special resolution alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the Court. — E. §§ 9 (1, 2), 264; N. S. W. c. (No. 22 of 1906) 3; T. c. (59 Vic. No. 19) 5; S. A. a. (No. 557) 66; Q. g. (55 Vic. No. 10) 4; W. A. a. (56 Vic. No. 8) 68; N. Z. 162.

Court to be satisfied that notice was given to creditors. When Court may dispense with notice or consent. Order to be subject to terms approved of by Court.

78. 1. Before confirming any such alteration the Court must be satisfied: A) That sufficient notice has been given to every creditor of the company and any person or class of persons whose interest may in the opinion of the Court be affected by the alteration; and B) That with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged, or has determined, or has been secured to the satisfaction of the Court. 2. The Court may in the case of any person or class of persons for special reasons dispense with the notice or consent required by this section. 3. An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper. — E. §§ 9 (3), 264; N. S. W. c. (No. 22 of 1906) 4. See also references to § 77, *supra*.

Court to have regard to rights of members. **79.** The Court shall in exercising its discretion under this Division of this Act have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may if it think fit adjourn the proceedings in order than an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect. It shall not be lawful to expend any part of the capital of the company in any such purchase. — E. §§ 9 (5), 264; N. S. W. c. (No. 22 of 1906) 5. See also references to § 77, *supra*.

Court may confirm alterations. **80.** The Court shall not confirm either wholly or in part any such alteration as aforesaid with respect to the objects of the company, unless it appears to the Court that the alteration is required in order to enable the company: A) To carry on its business more economically or more efficiently; or B) To attain its main purpose by new or improved means; or C) To enlarge or change the local area of its operation; or D) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or E) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement. — E. § 9 (1, 4), 264. See also references to § 77, *supra*. The Court will not sanction an alteration the object of which is merely to interpret existing articles, or to make them more clear. The confirmation of any alterations is within the discretion of the Court. — *In re Australian Widows', etc., Society*, 24 V. L. R. 613, 4 A. L. R. (C. N.) 93. For a case where the Court refused to confirm alterations under (A) and (C) see *In re National Mutual Life Association*, 26 V. L. R. 490, 22 A. L. T. 109, 6 A. L. R. 239.

Court may alter memorandum of association. **81.** The Court may at the time of or at any time after sanctioning any arrangement or compromise under the *Companies Act Amendment Act, 1892*, make such alteration in the memorandum, or articles of association, or deed of settlement of the company making such arrangement or compromise as the Court may think necessary or desirable in order to carry out or give effect to such arrangement or compromise, and in such event the provisions of the four next preceding sections of this Act shall not apply.

Registration of order together with memorandum as altered or substituted memorandum and articles and consequences thereof. **82.** 1. Where a company has altered the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for the deed of settlement, and such alterations has been confirmed by the Court, an office copy of the order confirming such alteration together with a printed copy of the memorandum of association or deed of settlement so altered or together with a printed copy of the substituted memorandum and articles of association (as the case may be) shall be delivered by the company to the Registrar-General within fifteen days from the date of the order, and the Registrar-General shall register the same and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to such alteration and the confirmation thereof have been complied with. 2. Thenceforth (but subject to the provisions of this Division of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were

a company registered under Part I. of the principal Act, with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company. — E. §§ 9 (6), 264; N. S. W. c. (No. 22 of 1906) 6 (1); T. c. (59 Vic. No. 19) 6; S. A. a. (No. 557) 67; Q. g. (55 Vic. No. 10) 5; W. A. a. (56 Vic. No. 8) 69; N. Z. 163.

Company making default liable to penalty. 83. If a company makes default in delivering to the Registrar-General any document required by this Division of this Act to be delivered to him, the company and the manager thereof shall each be liable to a penalty not exceeding ten pounds for every day during which it is in default. — E. §§ 9 (7), 264; N. S. W. c. (No. 22 of 1906) 6 (2). See also reference to § 82, *supra*.

No alteration of memorandum except under Acts. 84. Save as provided in the principal Act and this Act no alteration shall be made by any company in the provisions and conditions contained in its memorandum of association.

[§ 85 relates to power to make rules.]

Deed of settlement includes contract of copartnery. 86. In this Division of this Act expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company and not being an Act of Parliament, a Royal Charter, or Letters Patent. — E. § 264 (3); N. S. W. c. (No. 22 of 1906) 2, and references there given.

Division V. Reduction of capital and shares by a company.

Meaning of "creditor". 87. In this Division the word "creditor" includes holder of debentures or debenture stock.

Power to company to reduce capital by special resolution and order of Court, etc. 88. 1. Notwithstanding anything contained in this or the principal Act, a company may by special resolution so far modify the conditions contained in its memorandum of association as to reduce its capital, but no such resolution for reducing the capital of any company shall come into operation or take effect until confirmed on petition by the Court and registered with the Registrar-General as hereinafter mentioned. 2. The company shall after the date of the passing of any special resolution for reducing its capital add to its name until such date as the Court may fix the words "and reduced" as the last words in its name, and those words shall until such date be deemed to be part of the name of the company within the meaning of the *Companies Acts*. 3. The company shall in publishing its first balance-sheet or statement of its affairs or advertisement of its capital after the date of passing of any special resolution for reducing its capital show therein the reduction of capital so made. — See notes to N. S. W. a. (No. 40 of 1899) § 39, 41.

Company to apply to the Court for an order confirming reduction, which may be made as herein provided. 89. A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and on the hearing of the petition the Court, if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction either his consent to the reduction has been obtained or his debt or claim has been discharged, or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit, and also as to the costs of the proceedings. — E. §§ 47, 50; N. S. W. a. (No. 40 of 1899) 42; T. d. (60 Vic. No. 3) 5; S. A. a. (No. 557) 70 (1, 6); Q. f. (53 Vic. No. 18) 6; W. A. a. (56 Vic. No. 8) 72 (1); N. Z. 44. — The list of creditors must be settled at the time that application for confirmation is made to the Court. — *In re Ballarat Land, etc., Co.*, 3 A. L. R. 216. See also *In re Squatting Investment Co.*, 5 A. L. R. (C. N.) 89, 6 A. L. R. (C. N.) 1.

Creditors entitled to prove in winding-up may object to reduction. List of objecting creditors to be settled by the Court. 90. 1. Where a company proposes to reduce its capital every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which if that date were the commencement of the winding-up of the company would be admissible in proof against the company shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object. 2. The Court shall settle a list of such creditors and for that purpose shall ascertain as far as possible without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are

to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction. — E. 49 (1, 2); N. S. W. a. (No. 40 of 1899) 43; T. d. (60 Vic. No. 3) 7; S. A. a. (No. 557) 70 (3, 5); Q. f. (53 Vic. No. 18) 9; W. A. a. (56 Vic. No. 8) 72 (3, 5); N. Z. 45.

Court may dispense with consent of creditor on security being given for his debt.

91. Where a creditor whose names is entered on the list of creditors and whose debt or claim is not discharged or determined does not consent to the proposed reduction the Court may (if it think fit) dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating in such manner as the Court may direct a sum of such amount as is hereinafter mentioned (that is to say): a) If the full amount of the debt or claim of the creditor is admitted by the company, or though not admitted is such as the company is willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated; b) If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company is willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may (if it think fit) inquire into and adjudicate upon the validity of such debt or claim and the amount for which the company may be liable in respect thereof in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated. — E. § 49 (3); N. S. W. a. (No. 40 of 1899) 44; T. d. (60 Vic. No. 3) 8; S. A. a. (No. 557) 70 (6, 7); Q. f. (53 Vic. No. 18) 10; W. A. a. (56 Vic. No. 8) 72 (6, 7); N. Z. 46.

Order confirming reduction and minute showing certain particulars as to capital as altered to be registered. **92.** 1. The Registrar-General, upon the production to him of an order of the Court confirming the reduction of the capital of a company and the delivery to him of a copy of the order and of a minute (approved by the Court) showing with respect to the capital of the company as altered by the order the amount of such capital, the number of shares in which it is to be divided, the amount of each share, and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid upon each share, shall register the order and the minute, and on the registration the special resolution confirmed by the order registered shall take effect. 2. Notice of such registration shall be published in such manner as the Court may direct. 3. The Registrar-General shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute. — E. § 51; N. S. W. a. (No. 40 of 1899) 46; T. d. (60 Vic. No. 3) 11; S. A. a. (No. 557) 71; Q. f. (53 Vic. No. 18) 11; W. A. a. (56 Vic. No. 8) 73; N. Z. 47.

Minute to form part of memorandum of association and members to be liable only for difference between amounts paid on shares and amounts of shares as fixed by minute. **93.** The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association, and, subject as in this Act mentioned, no member of the company whether past or present shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute. — E. § 52; N. S. W. a. (No. 40 of 1899) 47; T. d. (60 Vic. No. 3) 12; S. A. a. (No. 557) 72 (1); Q. f. (53 Vic. No. 18) 12; W. A. a. (56 Vic. No. 8) 74 (1); N. Z. 47.

Saving of rights of creditors who are ignorant of proceedings. Liability of members to contribute for payment of debt of such creditors. **94.** If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim not entered on the list of creditors, and after such reduction the company is unable within the meaning of section seventy-seven of the principal Act to pay to the creditor the amount of such debt or claim, every person who would have been liable to contribute if the company had commenced to be wound up on the day prior to the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute

for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration, and on the company being wound up the Court on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction or of their nature and effect with respect to his claim may (if it think fit) settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves. — E. § 53; N. S. W. a. (No. 40 of 1899) 48; T. d. (60 Vic. No. 3) 13; S. A. a. (No. 557) 73; Q. f. (53 Vic. No. 18) 13; W. A. a. (56 Vic. No. 8) 75; N. Z. 48.

Copy of registered minute to be embodied in every memorandum of association subsequently issued. 95. The minute when registered shall be embodied in every copy of the memorandum of association issued after its registration, and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director or manager of the company who shall knowingly or wilfully authorize or permit such default shall incur the like penalty. — E. § 52; N. S. W. a. (No. 40 of 1899) 49; T. d. (60 Vic. No. 3) 14; S. A. a. (No. 557) 72 (2); Q. f. (53 Vic. No. 18) 14; W. A. a. (56 Vic. No. 8) 74 (2); N. Z. 49.

Penalty for concealment of name of creditor or misrepresentation of his debt, etc. 96. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids, or abets, or is privy to any such concealment or misrepresentation as aforesaid every such director, manager, or officer shall be guilty of a misdemeanour. — E. § 54; N. S. W. a. (No. 40 of 1899) 50; T. d. (60 Vic. No. 3) 15; S. A. a. (No. 557) 74; Q. f. (53 Vic. No. 18) 15; W. A. a. (56 Vic. No. 8) 76; N. Z. 50.

[§ 97 confers power to make rules.]

Construction of "capital" and powers to reduce capital. 98. 1. The word "capital" as used in this Division of this Act shall include paid-up capital and the power to reduce capital conferred by this Act shall include a power to cancel any lost capital or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company, or to cancel any shares which have not been taken or agreed to be taken by any person, or which have been forfeited or surrendered, and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved notwithstanding anything contained in the *Companies Acts*. 2. Where shares in any company have been lawfully forfeited or surrendered in pursuance of any power in that behalf contained in the articles of association of such company or in the *Companies Acts*, the amount paid up on such forfeited or surrendered shares may be passed to the credit of a reserve fund, or used to write down the book values of any assets of the company, or so much of the said amount as may be required for the purpose may be used to write off losses previously made, but in no case shall any portion of such amount be treated as profit available for dividends or bonus. — E. § 46; N. S. W. a. (No. 40 of 1899) 40; T. d. (60 Vic. No. 3) 9, e. (6 Edw. 7, No. 25) 2; S. A. a. (No. 557) 68 (5); Q. f. (53 Vic. No. 18) 4; W. A. a. (56 Vic. No. 8) 70 (5); N. Z. 53.

Power where reduction of capital does not lessen liability for unpaid capital. 99. Where the reduction of the capital of the company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital: A) The creditors of the company shall not unless the Court otherwise direct be entitled to object or required to consent to the reduction; and B) It shall not be necessary before the presentation of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced". — See note to N. S. W. a. (No. 40 of 1899) § 41. Creditors can not object unless granted leave to do so. — In re Braybrook Implement Co., 19 A. L. T. 87.

Court may require company to publish reasons for reduction. 100. In any case that the Court thinks fit so to do it may require the company to publish in such

manner as it thinks fit the reasons for the reduction of its capital, or such other information in regard to the reduction of its capital as the Court may think expedient, with a view to give proper information to the public in relation to the reduction of its capital by a company, and if the Court think fit the causes which led to such reduction. — E. § 55; N. S. W. a. (No. 40 of 1899) 45; T. d. (60 Vic. No. 3) 10; S. A. a. (No. 557) 70 (2); Q. f. (53 Vic. No. 18) 7; W. A. a. (56 Vic. No. 8) 72 (2); N. Z. 54.

Court may sanction reduction of capital. 101. The Court may at the time of or at any time after sanctioning any arrangement or compromise under the *Companies Act Amendment Act, 1892*, sanction the reduction of the capital of the company making such arrangement or compromise as the Court may think necessary or desirable to carry out or give effect to such arrangement or compromise; and in such event sections eighty-eight to ninety-one inclusive, ninety-four, ninety-six, and ninety-seven of this Act shall not apply, and the order of the Court containing such sanction shall have the same effect as an order of the Court confirming the reduction of the capital of a company under this Act.

Division VI. Liability of directors and other persons with regard to companies and societies.

Application. 102. 1. Except where otherwise expressly provided, this Division of this Act shall apply and extend not only to companies registered or proposed to be registered under Part I. of the principal Act, or under Division I. or Division III. of this Act, but also to all companies (not being mining companies) or societies whatever carrying on or proposing to carry on business in Victoria. 2. In this Division unless inconsistent with the context: "Company" shall be deemed to include society and also proposed company or society; "Director" or "directors" includes provisional, proposed, or intended director or directors, and in the case of any company incorporated outside Victoria shall also include persons being or acting as directors of or in relation to the business of the company in Victoria; "Shares" includes debentures and debenture stock.

Filing of prospectus. 103. 1. Every prospectus inviting subscriptions or applications for shares in a company shall state the date on which it is issued, and such date shall for all purposes as against the company and any person party to the issue of the prospectus be taken as the date of publication of the prospectus. A) A copy of every such prospectus shall be signed by every person who is named therein as a director of the company or by his duly authorized agent, and shall be filed with the Registrar General on or before the date of its publication. 3. If default is made in complying with the requirements of this section every director, officer, and agent of the company who is a party to the issue of the prospectus shall be liable to a penalty not exceeding five pounds for every day during which the default continues. — E. § 80; S. A. a. (No. 557) 224; Q. f. (53 Vic. No. 18) 31; W. A. a. (56 Vic. No. 8) 225; N. Z. 74. Cp. also E. 7 Edw. 7, c. 50, § 1—5, 8. — For cases where statements in prospectus were held to be misleading, see *Benjamin v. Wymond*, 10 V. L. R. (E.) 3, 5 A. L. T. 153; *Allan v. Gotch*, 9 V. L. R. (L.) 371.

Prospectus, etc., to give names addresses, etc., of directors and consideration paid for property and good will. Non-compliance with section fraudulent. Rescission of contract where prospectus deficient. Liability for non-compliance. Vendor. Lease. Certain circulars and notices to members not within section. What is material. Condition to waive void. 104. 1. Every prospectus howsoever published or issued after the commencement of this Act which is published or issued with a view of obtaining subscriptions for shares in a company, or directly or indirectly inviting persons to subscribe for shares in a company shall specify: A) The names, addresses, and occupations of the promoters and directors and the number of shares held or agreed to be taken up by them respectively, and whether wholly paid up or partly paid up, and the consideration, remuneration, or reward (if any) to the directors or promoters respectively for becoming directors, promoters, or members of the company; B) The date of and the names of the parties to any contract directly or indirectly relating to the company, or to the promotion thereof, entered into by the company or the promoters, directors, or trustees thereof, or any person acting as a trustee or agent for or on behalf of them or any of them, and whether such contract be entered into with the promoters or directors or any of them or any other person whomsoever within two years before the issue of such prospectus,

whether subject to adoption by the director or the company or otherwise, and shall also state a place where such contract if in writing may be inspected: Provided that this subdivision of this section shall not apply to a contract entered into by the company after its incorporation in the ordinary course of the business carried on by the company; C) The contents of the memorandum of association (if any) with the names and addresses of the signatories, and the number of shares subscribed for by them respectively; D) The consideration paid or to be paid (and if so how and when) for any property purchased or acquired or to be purchased or acquired by the company and from whom and when purchased or acquired, and whether any part and if so how much of such consideration money is for goodwill; E) The amount (if any) payable as commission, bonus, or reward for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions for any shares in the company or the rate of any such commission; F) The minimum subscription upon which the directors will proceed to allotment; G) The number of shares (if any) fixed by the articles of association as the qualification of a director; H) The minimum amount payable on application and allotment on each share; I) The number and amount of shares issued or agreed to be issued as fully or partly paid up otherwise than in money, and in the latter case the extent to which they are so paid up, and in either case the consideration for which and the person or persons to whom such shares have been issued or are proposed or intended to be issued; J) The names, addresses, and occupations of the vendors of any property purchased or acquired by the company or to be so purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and where there is more than one vendor or the company is a sub-purchaser, the amount payable in money or shares to each vendor; K) The amount or estimated amount of preliminary expenses; L) The amount paid or intended to be paid and the shares allotted or intended to be allotted to or for any promoter and the consideration therefor; M) The amount intended to be reserved for working capital; N) The proposed application of the proceeds of the issue of the shares; and O) The names and addresses of the auditors or intended auditors (if any) of the company. 2. A prospectus which does not comply with this section shall be deemed to be fraudulent on the part of the following persons knowingly issuing the same (that is to say): A) Every person who is a director or manager of the company at the time of the issue of the prospectus; and B) Every person who having authorized such naming of him is named in the prospectus as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time; and C) Every promoter of the company. 3. Every person taking shares on the faith of such prospectus unless he had actual notice of the particulars omitted from the prospectus shall, in addition to any other remedy he may have been entitled to, sue for rescission of his contract to take shares. 4. In the event of non-compliance with any of the requirements of this section with respect to a prospectus, any person aggrieved shall, be entitled to compensation from any person knowingly issuing the same and on the part of whom the prospectus is by virtue of the provisions of this section deemed to be fraudulent unless such last mentioned person proves that: A) As regards any matter not disclosed he was not cognizant thereof, and could not with reasonable diligence have discovered it; or B) The non-compliance arose from an honest mistake of fact on his part; or C) The person aggrieved had actual notice of the matter not disclosed. 5. For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract absolute or conditional for the sale or purchase or for any option of purchase of any property to be purchased or acquired by the company in any case where: A) The purchase money is not fully paid at the date of publication of the prospectus; or B) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or C) The contract depends for its fulfilment on such issue. 6. Where any of the property to be purchased or acquired by the company is to be taken on lease this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee. 7. This section shall not apply to a circular or notice issued to and inviting only existing members of a company to subscribe for further shares, but subject as aforesaid

this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently: Provided that A) The requirements as to the memorandum of association and the qualification of directors, the names and addresses of directors, and the shares held or to be taken by them, and the amount or estimated amount of preliminary expenses shall not apply in the case of a prospectus published more than one year after the formation of the company; and B) In the case of a prospectus published more than one year after the formation of a company the obligation to disclose all material contracts and facts shall be limited to a period of one year immediately preceding the publication of the prospectus. 8. For the purposes of this Division every contract and fact is material which would influence the judgment of a prudent investor in determining whether he would subscribe for the shares offered by the prospectus. 9. Any condition requiring an applicant for shares to waive, and any agreement to waive, due compliance with this section or purporting to affect him with notice of any document or matter not specifically referred to in the prospectus shall be void. — E. § 81; N. S. W. a. (No. 40 of 1899) 66; T. a. (33 Vic. No. 22) 21; S. A. a. (No. 557) 221—224; Q. f. (53 Vic. No. 18) 31; W. A. a. (56 Vic. No. 8) 222—225; N. Z. 74—81.

Power to issue abridged advertisement. 105. Notwithstanding anything in the last preceding section it shall not be necessary in an advertisement of a prospectus in the public press to insert the particulars required by that section, except those with respect to the names and addresses of the directors and the number of shares held or to be taken by them, and with respect to the minimum subscription on which the directors may proceed to allotment: Provided that the advertisement A) States that the requirements aforesaid have not been fully complied with; and B) States where copies of the full prospectus and forms of application for shares may be obtained; and C) States that applications for shares will proceed only on one of the forms of application referred to and indorsed upon a printed copy of the prospectus; and D) Does not contain anything to which the said requirements apply, and which is not in the prospectus or is inconsistent with the prospectus. — See note to § 104, *supra*.

Duties and liabilities of persons issuing prospectus or notice. 106. 1. Every person being a director or promoter of a company who is party to the issue of a prospectus shall disclose to the company and every other director or promoter who is known to him all material contracts and facts within his knowledge, which under the foregoing provisions of this Act ought to be disclosed in the prospectus, and in default of so doing shall be liable to compensate the company and any such other director or promoter for any loss or damage arising from the default, unless he proves that: A) The non-disclosure arose from an honest mistake of fact on his part; or B) The company or such other director or promoter had actual notice of the matter not disclosed. 2. Every person who has by being a party to the issue of any prospectus incurred any liability under this section shall be entitled to recover contribution as in cases of contract from any person who if sued separately would have been liable to make any payment on the same ground. 3. No liability by this section imposed on any person to pay compensation shall on the death of any such person extend or pass to his executors or administrators, nor shall the estate of any such person after his decease be made liable under of section.

Restriction on alteration of terms mentioned in prospectus. 107. A company shall not vary the terms of any contract referred to in the prospectus, or the application of the proceeds of any issue as stated in the prospectus, except with the approval of the statutory meeting or any subsequent general meeting.

Restriction on appointment or advertisement of director. 108. A person shall not be capable of being appointed director of a company by the memorandum or articles of association, and shall not be named as a director of a company in any prospectus issued by or on behalf of the company, unless before the registration of the articles or the publication of the prospectus he has: A) Signed and filed with the Registrar-General a consent in writing to act as such director; and B) In case of an existing company has signed the memorandum of association for or is the actual holder of a number of shares not less than his qualification (if any); or C) In case of a proposed company has signed and filed with the Registrar-General a contract in writing to take from the proposed company and pay for his qualification shares (if any) prior to his election as a director.

Qualification of director. 109. 1. Without prejudice to the restriction imposed by the last preceding section every director, who is by the regulations of the company required to hold a specified share qualification and who is not already qualified, shall obtain such qualification before his appointment or election. 2. The office of director of a company shall be vacated if he ceases at any time to hold his qualification. 3. If any unqualified person acts as director of a company he shall be liable to pay to the company the sum of five pounds for every day during which he so acts. 4. Unless otherwise provided by the regulations of a company, the qualification of any director of a company must be held by him solely and not as one of several joint holders. — Where under the articles of association it was provided that no person who was indebted to the company in respect of calls was eligible for election as director, and that a director so indebted at the day of payment must vacate his office, it was held that a person who had given his promissory note in payment of calls was disqualified. — *Umphelby v. Wilkie*, 5 A. J. R. 108. It was once held that the qualification need exist only at the time of election. — *Reeves v. McCafferty*, 1 V. R. (L.) 190, 1 A. J. R. 153. But see now subs. (2) of this section.

Liability for statements in prospectus. 110. 1. Where after the commencement of this Act a prospectus is published or issued with a view of obtaining subscriptions for shares in a company, or directly or indirectly inviting persons to subscribe for shares in a company, every person who is a director or manager of the company at the time of the issue of the prospectus, and every person who having authorized such naming of him is named in the prospectus as a director of the company, or as having agreed to become a director of the company either immediately or after an interval of time, and every manager or promoter of the company, and every person who has authorized the issue of the prospectus shall be liable to pay compensation to all persons who subscribe for any shares on the faith of such prospectus for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or in any report or memorandum appearing therein or thereon or by reference incorporated therein or issued therewith unless it is proved: A) With respect to every such untrue statement not purporting to be made on the authority of an expert or of a public official document or statement that he had reasonable ground to believe and did up to the time of the allotment of the shares believe that the statement was true; and B) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or expert that it fairly represented the statement made by such engineer, valuer, accountant, or expert or was a correct and fair copy of or extract from the report or valuation: Provided always, that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or expert, or was a correct and fair copy of or extract from the report or valuation, such director, manager, person named, promoter, or person who authorized the issue of the prospectus as aforesaid shall be liable to pay compensation as aforesaid, unless it be proved that he had reasonable ground to believe and did believe that the statement, report, or valuation was true and that the person making the statement, report, or valuation was competent to make it; and C) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document that it was a correct and fair representation of such statement, or a copy of, or extract from such document and that up to the time of the allotment of the shares he believed such statement to be true; or unless it is proved D) That having consented to become a director or manager of the company he withdrew his consent before the issue of the prospectus, and that the prospectus was issued without his authority or consent; or E) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent; or F) That after the issue of such prospectus and before allotment thereunder he on becoming aware for the first time of any untrue statement therein withdrew his consent thereto and caused reasonable public notice of such withdrawal and of the reason therefor to be given. 2. No liability by this section imposed on any person to pay compensation shall on the death of any such person extend or pass to his executors or administrators, nor shall the estate of any such person after his decease be made liable under this section. 3. In this

section the word "promoter" means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing such untrue statement, but shall not include any person by reason only of his acting in a professional capacity for persons engaged in procuring the formation of the company. 4. In this section the word "expert" includes any person whose profession, occupation, or experience, or assumed profession, occupation, or experience gives authority to a statement made by him. — E. § 84; N. S. W. a. (No. 40 of 1899) 66; T. a. (33 Vic. No. 22) 21; S. A. a. (No. 557) 221 (2, 3); Q. f. (53 Vic. No. 18) 31; W. A. a. (56 Vic. No. 8) 222 (2, 3); N. Z. 76. Cp. a. (No. 1074) § 36, 93. — As to the liability of promoters for secret profits, see *Benjamin v. Wymond*, 10 V. L. R. (E.) 3, 5 A. L. T. 153. Promoters of a company do not sustain the relation of partners to each other. — *Wilkins v. Davies*, 16 V. L. R. 70, 11 A. L. T. 141. As to liability for fraud see *Curwen v. Yan Yean Land Co.*, 17 V. L. R. 745, 13 A. L. T. 147. Representations deemed not misleading, see *Langier v. Victorian, etc., Power Co.*, 16 V. L. R. 64, 11 A. L. T. 126.

Indemnity where name of person has been improperly inserted as a director.

Liability not transmitted. 111. 1. Where any such prospectus as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not consented to become a director or has withdrawn his consent before the issue of such prospectus, and has not authorized or consented to the issue thereof, the promoters, directors, and manager of the company (except any without whose knowledge or consent the prospectus was issued the onus of proof of which shall lie on any person claiming to be so excepted) and any person who authorized the issue of such prospectus shall be liable to indemnify the person named as a director of the company or as having agreed to become a director thereof as aforesaid against all penalties, damages, costs, charges, and expenses to which he may be liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof. 2. No liability by this section imposed on any person to indemnify any other person shall on the death of any such first-mentioned person extend or pass to his executors or administrators, nor shall the estate of any such person after his decease be made liable under this section. — E. § 84; S. A. a. (No. 557) 222; Q. g. (55 Vic. No. 10) 7; W. A. a. (56 Vic. No. 8) 223; N. Z. 77.

[§ 112 declares the making of false statements as to companies to induce persons to take shares a misdemeanour.]

Promoters, etc., liable to pay compensation to persons who are misled by false prospectus, etc. 113. Any person who has taken part in the promotion or formation of a company, or is or has been a director, manager, or officer of a company, and who shall knowingly or with gross negligence alone or in conjunction with any other person sign, publish, issue, or circulate, or cause to be signed, published, issued, or circulated any prospectus, report, certificate, balance-sheet, document, or written statement relating to such company or its affairs, which in the opinion of the Court is calculated to induce any person (whether ascertained or not) to rely on the truth thereof, and which is false in any material particular in matters with which in the opinion of the Court it was the duty of such first-mentioned person to be acquainted, shall be liable to pay compensation to any shareholder, contributory, or creditor of the company who has sustained loss in consequence of relying upon such false prospectus, report, certificate, balance-sheet, document, or statement: Provided, however, that no liability shall hereby attach to any person who has acted only in a professional capacity for the company or for any persons engaged in procuring the formation thereof.

Restrictions on directors and officers. 114. 1. After the commencement of this Act no person who is or who during the previous year has been a director, manager, or officer of a company shall either directly or indirectly sell or dispose of any property to such company or its representatives or participate in the profits of any such sale or disposal. 2. Nothing in subsection one of this section shall apply to the sale or the disposition by any such person of any personal property (not being shares in any company or society) in the ordinary course of his trade or occupation, nor shall any person be deemed to contravene the provisions of such subsection by reason only of his participating as a shareholder in an incorporated company consisting of more than twenty persons in the profits of any sale or disposition of any property by such incorporated company. 3. This section shall not apply to any sale or disposition in writing by any person of a business and the assets

thereof of which he is the proprietor wholly or in part to any company hereafter formed for the purpose of purchasing or acquiring the same provided: A) If there be a prospectus that full particulars of such sale or disposition be disclosed in such prospectus; or B) If there be no prospectus then that such sale or disposition shall be mentioned in the memorandum of association and full particulars thereof shall be disclosed in an instrument in writing consenting thereto and signed by every shareholder of the company at the time the contract for such sale or disposition is entered into by the company. 4. This section shall not apply to any sale or disposition where the purchase or acquisition by the company has been authorized by a special resolution of the company prior thereto, and where the notice of the meeting at which such resolution is passed contains full particulars of such proposed sale and disposition. "Full particulars" in this subsection means such particulars of the nature and effect of such sale or disposition and also all facts known to such person as are material to be made known to enable a judgment to be formed as to the expediency of the company entering into a contract for such sale or disposition. 5. Every person who is knowingly guilty of a contravention of this section shall be guilty of an offence and shall be liable on conviction to a penalty not exceeding double the amount which the company has paid or is liable to pay for the property, and in default of payment of such penalty to be imprisoned for any term not exceeding two years.

Duties and liabilities of promoters. 115. 1. Every promoter is in a fiduciary relation towards a company which he is engaged in promoting, and consequently: A) A promoter may not sell or let his own property, or property in which he has an interest, to the company, and may not be interested in any contract with the company, unless at a general meeting of the company before the completion of the purchase, lease, or contract a full and fair disclosure is made that he is the vendor, or lessor of, or has an interest in the property or in the contract, and of the nature and amount of that interest; B) Any such contract as aforesaid with respect to which such disclosure is not made shall be voidable at the option of the company; C) A promoter may not retain for his own use any profit or remuneration, whether in money, shares, or otherwise, arising out of or received by him in connexion with the promotion of the company or in consideration of services rendered by him in the course of such promotion, unless at a general meeting of the company full and fair disclosure has been made of the nature and amount of that profit or remuneration, and the company has by extraordinary resolution assented thereto after such disclosure; and D) Every promoter shall be liable to account to the company for the amount or value of any secret profit or remuneration and to repay the same to the company with such interest as the Court may direct. 2. Where a person would, by his conduct or dealings in the promotion of any company, or otherwise, have incurred any liability, he shall not be discharged from such liability by reason only of his having acted as agent or on behalf of any person or company in respect of such promotion.

General duties and liabilities of directors. 116. 1. A director may not, in consideration of his becoming a director or taking any contract or otherwise acting in a company's concerns, or without any such consideration, retain for his own use any remuneration or gift in money, shares, or otherwise, from any promoter of the company, or from any vendor or lessor to the company, or from any person contracting with the company, or from any person interested in the fulfilment by the director of any contract with the company, unless the remuneration or gift is received in pursuance of a power in that behalf contained in the articles of association, and is expressly sanctioned by an extraordinary resolution of the company, and any remuneration or gift not so sanctioned may be recovered by the company from the director with such interest as the Court may direct. 2. Every director shall be under an obligation to the company to use reasonable care and prudence in the exercise of his powers and duties, and shall be liable to compensate the company for any damage incurred by reason of culpable neglect to use such care and prudence. Provided, however, that no liability by this subsection imposed on any person as a director shall on the death of any such person extend or pass to his executors or administrators, nor shall the estate of any such person after his decease be made liable under this subsection.

Liabilities of directors in respect of debts undue preferences, etc. 117. 1. If any director of a company fraudulently creates or is party to the fraudulent creation

of any debt or liability of the company, knowing at the time of its creation that there was not reasonable or probable ground of expectation that the company would be able to pay or discharge the debt or liability, he shall be personally liable to pay or discharge such debt or liability, but shall be entitled to recover contribution as in cases of contract from any person who if sued separately would have been subject to liability on the same ground. 2. If any director of a company is knowingly a party to any undue or fraudulent preference of any of the creditors of the company, he shall be guilty of a misfeasance. 3. If within four months next before the commencement of the winding-up of a company which is unable to pay its debts any director of the company pawns, pledges, or disposes of otherwise than in the ordinary course of business any property which he knows to have been obtained by the company on credit, and not to have been paid for, or is party to any such pawning, pledging, or disposition, he shall be liable to indemnify the company against any liability to the vendor of the property in excess of the benefit (if any) which the company has received from the transaction, and to pay the amount of that excess to the vendor.

Liability of "experts". Meaning of "expert". 118. 1. If any person being a barrister and solicitor, valuer, accountant, engineer, or other expert knowingly and wilfully makes, signs, or gives, or causes to be made, signed, or given any false certificate, report, valuation, plan, statement, or other document whatsoever relating to the value, capacity, productiveness, situation, quality, or capability of any matter or thing respecting the objects or purposes for which any company is formed or is intended to be formed, or knowing the same to be false issues, utters, offers, or disposes of any such certificate, report, valuation, plan, statement, or document he shall be guilty of a misdemeanour and shall on conviction thereof be liable to be imprisoned for any term not exceeding three years. 2. In this section "expert" includes any person whose profession, occupation, or experience or assumed profession, occupation, or experience gives authority to a statement made by him. — E. 63 & 64 Vic. c. 48, § 28; N. Z. 80.

Saving for general law. 119. Except as expressly mentioned in this Act, nothing in the provisions of this Act with respect to the duties or liabilities of directors, or promoters, or managers, or experts, or intended directors, promoters, or managers shall limit or diminish any liability which any person may incur under any statute or common law apart from this Act.

Contribution from co-directors, etc. 120. Every person who has become liable to make any payment under the provisions of this Division of this Act shall be entitled to recover contribution as in cases of contract from any other person who if sued separately would have been liable to make the same payment. — T. c. (59 Vic. No. 19) 31; S. A. a. (No. 557) 223; Q. g. (55 Vic. No. 10) 8; W. A. a. (56 Vic. No. 8) 224; N. Z. 78. Cp. E. 7 Edw. 7, c. 50, § 33.

Division VII. Winding-up.

Meaning of "company". 121. In this division of this Act, unless inconsistent with the context, the word "company" shall be deemed to include society.

Additional grounds of winding-up. 122. 1. A company may be wound up by the Court under the following circumstances, in addition to the circumstances mentioned in the principal Act: A) When the Court is satisfied that a certificate of incorporation has been obtained by fraud, misrepresentation, or mistake, or by a wilful violation of any provision of any Act of Parliament; or B) When the Court is satisfied that the company was formed, or that its business has been carried on with the intent or in such manner as to defraud, defeat, or delay the creditors of the company, or of any other company or person, or for any fraudulent or illegal purpose, or in wilful violation of the provisions of the *Companies Acts*; or C) When the Court is satisfied that any shares in the company have been allotted in contravention of the provisions of the *Companies Acts*. 2. Where an order has been, or in the opinion of the Court might have been, made for winding up a company on any of the grounds mentioned in this section the Court may in the course of winding up the company make any such order for declaring the liability of any one or more of the members of the company for the debts or some of the debts of the company to be unlimited as to the Court may seem just in the circumstances of the case. 3. A petition for winding-up under this section shall not be presented except by the Attorney-General.

Commissioners to take evidence in open Court. 123. Unless otherwise ordered by the Court, all evidence taken by commissioners pursuant to section one hundred and thirteen of the principal Act shall be so taken as in open Court and shall be open to the public.

Amendment of No. 1074 as to applications. 124. In a voluntary winding-up an application under section one hundred and twenty-four or section one hundred and seventy-seven of the principal Act may be made by any creditor of the company.

Effect of winding-up order or proceedings for removal of name from register. 125. Where an allottee of shares in a company takes proceedings for the removal of his name from the register of members on the ground of misrepresentation or non-disclosure, and before he obtains a judgment or order for such removal a winding-up of the company commences, his proceedings shall be stayed and he shall be retained as a contributory of the company.

Any company may be wound up unless process satisfied within four days after seizure. Effect of winding-up order upon judgments. 126. 1. A company may be wound up by the Court whenever execution or warrant of distress issued against the same on any legal process for the purpose of obtaining payment of not less than fifty pounds has been levied or executed by seizure, unless such process be *bona fide* satisfied by payment or otherwise within four days from seizure, provided that a petition to wind up be presented within twelve days from the seizure. 2. If any such company be commenced to be wound up within four days after the sale by a sheriff or county Court bailiff or under a warrant of distress from any Court of petty sessions of any property of the company the sheriff, or bailiff, or officer levying such distress shall hand over the proceeds of such sale to the liquidator of such company to be dealt with as part of the assets of such company.

Provisions as to liquidator. 127. 1. On an order being made by the Court for winding-up a company the officer hereinafter mentioned shall by virtue of his office become the provisional liquidator of the company and shall continue to act as such until he or another person becomes liquidator and is capable of acting as such. 2. The said officer shall be the official liquidator appointed under the principal Act, or, if there is more than one such official liquidator, then such one of them as the Court may appoint, or if there is no such official liquidator then an officer appointed for the purpose by the Court. Any such officer shall for the purpose of his duties under this Act be styled the official liquidator. 3. When a person other than the official liquidator is after the commencement of this Act appointed liquidator of a company, and whether the winding-up began before or after the commencement of this Act he shall be styled liquidator and not official liquidator of the company, and the provisions of the principal Act and this Act relating to the official liquidator shall in their application to him be construed as if the word "official" were omitted therefrom. Such person shall not be capable of acting as liquidator until he has notified his appointment to the Registrar-General and given security in the manner and to the amount required by the Court. 4. If any vacancy occurs in the office of liquidator of a company, the official liquidator shall by virtue of his office be the liquidator during the vacancy. 5. The official liquidator may be appointed by the Court provisional liquidator of the company at any time after the presentation of the petition and before a winding-up order has been made. 6. Where an application is made to the Court to appoint a receiver on behalf of the debenture-holders or other creditors of a company the official liquidator may be so appointed.

Directors not to be liquidators. 128. Upon the voluntary winding-up of a company which can not by reason of its liabilities continue its business, and whether the winding-up began before or after the commencement of this Act, no person who at any time within twenty-four months preceding such winding-up has been a director, or manager, or promoter of such company shall be eligible to be appointed, or shall act as a liquidator for the purpose of winding-up the affairs of the company, unless so determined by a resolution carried by a majority of the creditors in number and value at a meeting convened by the manager of the company of which seven days' notice has been given to every creditor stating the object of the meeting: Provided that nothing in this section shall affect any appointment made before the commencement of this Act.

Power to appoint special manager. 129. 1. Where the official liquidator becomes the liquidator of a company whether provisionally or otherwise, he may,

if satisfied that the nature of the estate or business of the company or the interest of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may on such application, appoint a special manager thereof during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be intrusted to him by the Court. 2. The special manager shall give such security and account in such manner as the Court may direct. 3. The special manager shall receive such remuneration as may be fixed by the Court. 4. The special manager may at any time be removed by the Court.

Meeting of creditors. Seventh Schedule. 130. 1. When the Court has made an order for winding-up a company, or if any vacancy occurs in the office of liquidator of a company, the official liquidator shall forthwith summon separate meetings of the creditors and contributories of the company for the purpose of: A) Determining whether or not an application is to be made to the Court for appointing the official liquidator or some other person or persons a liquidator or liquidators in the place of the official liquidator; and B) Determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator or liquidators, and who are to be the members of such committee, if appointed. The Court may make any appointment and order required to give the effect to any such determination, and if there is a difference between the determination of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions, the Court shall decide the difference and make such order thereon as the Court may think fit. 2. The provisions of the seventh Schedule to this Act shall, subject to such additions and modifications as may be made therein by general rules, apply to any meeting summoned in pursuance of this section. 3. In case a liquidator is not appointed by the Court the official liquidator shall be the liquidator of the company. 4. In case a liquidator or liquidators be appointed by the Court, the official liquidator shall be paid by the liquidator or liquidators out of the assets of the company as remuneration for his services such sum not exceeding ten pounds over and above his actual disbursements as the Court may determine. — Cp. In re Standard Bank of Australia, 25 V. L. R. 44, 5 A. L. R. (C. N.) 83.

Statement of affairs. 131. 1. Where the Court has made an order for winding up a company there shall be made out and submitted to the official liquidator a statement as to the affairs of the company in the prescribed form verified by affidavit and showing the particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors of the company, the securities held by them respectively, the amounts secured, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official liquidator may require. 2. The statement shall be submitted and verified to the best of their belief and knowledge by one or more of the persons who is or are at the time of the winding-up order directors, and by the person who is at that time the manager of the company, or by such of the persons being or having been directors, managers, or officers of the company, or having taken part in the formation or promotion of the company at any time within one year before the order for winding-up the company as the official liquidator subject to the direction of the Court may require to submit and verify the same. 3. The statement shall be submitted within fourteen days from the date of the order or within such extended time as the official liquidator or the Court may for special reasons appoint. 4. Any person making or concurring in making the statement and affidavit required by this section shall be allowed and shall be paid by the official liquidator out of the assets of the company such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court. 5. If any person without reasonable excuse, the onus of proof of which shall lie on him, makes default in complying with the requirements of this section he shall be liable to a penalty not exceeding ten pounds for every day during which the default continues. 6. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or his agent at all reasonable times on payment of the prescribed fee to inspect the statement submitted in pursuance of this section and to a copy thereof or extract therefrom.

But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall be punishable accordingly on the application of the official liquidator.

Report on winding-up and proceedings thereupon. 132. 1. Where the Court has made an order for winding up a company the official liquidator shall as soon as practicable after receipt of the statement of the company's affairs submit a preliminary report to the Court: A) As to the amount of capital issued subscribed and paid up and the estimated amount of assets and liabilities; and B) If the company has failed, as to the causes of the failure; and C) Whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof. 2. The official liquidator may also if he thinks fit to make a further report or further reports stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company, or by any director or officer of the company in relation to the company prior to or since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court.

Powers of Court consequent on any report. 133. 1. The Court may after consideration of any such report, without any application in that behalf, and may on the application of any creditor, contributory, or shareholder, both where an order has been made for winding-up a company and where a company is being voluntarily wound up, and whether such winding-up began before or after the commencement of this Act, direct that any person who has taken any part in the promotion or formation of the company, or is or has been a director, manager, officer, shareholder, or creditor of the company shall attend before the Court on a day appointed by the Court for that purpose and be publicly examined as to the promotion or formation of the company or as to his conduct and dealings as promoter, director, manager, officer, shareholder, or creditor of the company, and the Court may require any such person to produce any books, accounts, securities, vouchers, papers, writings, and documents relating to such promotion, formation, conduct, or dealings. 2. The official liquidator or such person as the Court may direct shall take part in the examination and for that purpose may if specially authorized by the Court in that behalf employ a barrister and solicitor. 3. Any creditor or contributory of the company may also take part in the examination either personally or by barrister and solicitor. 4. The Court may put or allow to be put such questions to the person examined as to the Court may seem expedient. 5. The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him, and to produce the said books, accounts, securities, vouchers, papers, writings, and documents. The person examined shall if he require it at his own cost prior to such examination be furnished with a copy of the official liquidators report, and shall also at his own cost be entitled to employ at such examination a barrister and solicitor who shall be at liberty to put such questions to the person examined as the Court may deem just. The Court may allow such person such costs (if any) as the Court in its discretion may think fit. Notes of the examination shall be taken down in writing, and shall be read over to or by and signed by the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any such person and any creditor or contributory of the company at all reasonable times on payment of such fee as may be prescribed. 6. The Court may if it thinks fit adjourn the examination from time to time. 7. A public examination under this section may, if the Court so directs and subject to general rules and to any specific directions by the Court, be held before any judge of the Court of Insolvency or before any officer of the Supreme Court named for the purpose by the Court, and the powers of the Court under subsections four, five and six of this section may (except as to costs) be exercised by the person before whom the examination is held. — The power of the Court under subsection (1) can be exercised only when facts suggestive of fraud are shown. — *In re Rubber Inventions Co.*, 14 A. L. R. 350.

Committee of inspection. 134. 1. A committee of inspection appointed in pursuance of this Act shall consist of persons being creditors or contributories of the company or persons holding general powers of attorney from such persons, in such proportions as may be agreed on by the meetings of creditors and contributories, or as in case of difference may be determined by the Court. 2. The com-

mittee of inspection shall meet at such times as they from time to time appoint, and failing such appointment at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary. 3. The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting. In case of an equality of votes on any subject at any meeting the person acting as chairman thereof shall have a second or casting vote. 4. Any member of the committee may resign his office by notice in writing signed by him and delivered to the liquidator. 5. If a member of the committee becomes insolvent, or compounds or arranges with his creditors, or is absent from three consecutive meetings of the committee without the leave of those members of the committee who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon become vacant. 6. Any member of the committee representing creditors may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting. Any member of the committee representing contributories may be removed by an ordinary resolution at any meeting of contributories of which seven days' notice has been given stating the object of the meeting. 7. On a vacancy occurring in the office of a member of the committee the liquidator shall forthwith summon a meeting of creditors or of contributories as the case may require for the purpose of filling the vacancy, and the meeting may by resolution re-appoint the same or appoint another creditor or contributory to fill the vacancy. 8. The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body. 9. If there be no committee of inspection any act or thing, or any direction or permission of this Act authorized or required to be done or given by the committee may be done or given by the Court on the application of the liquidator.

Power of Court to assess damages against delinquent directors, officers, and promoters. Application of certain sections. 135. 1. Where in the course of the winding-up of a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, auditor, or any officer of the company has misapplied, or retained, or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the official liquidator, or of the liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, auditor, or officer of the company, and compel him to repay any moneys or restore any property so misapplied, or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the Court thinks just. 2. The provisions of this section shall apply in the winding-up of any company whether the same is being wound up by or subject to the supervision of the Court, or is being wound up voluntarily, and notwithstanding that the offence is one for which the offender is criminally responsible. 3. The provisions of this section and next following twelve sections shall apply to any company which is being wound up whether the winding-up began before or after the commencement of this Act.

Liquidator to pay moneys into bank. Liquidator retaining money liable to penalty. 136. 1. Every liquidator of a company which is being wound up shall pay all sums held or from time to time received by him into such bank, and to the credit of such account as the majority of the creditors in number and value at any general meeting shall appoint, and, failing such appointment, into such bank and account as the rules may from time to time appoint, or as the Court shall direct. 2. If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as to the Court shall seem just, and to be removed from his office by the Court, and shall be liable to pay any costs and expenses

occasioned by reason of his default. — As to practice under subsection (1) see *In re Real Estate, etc., Bank*, 18 A. L. T. 241; 3 A. L. R. (C. N.) 29.

Liquidator not to pay money into private account. 137. 1. No liquidator of a company which is being wound up shall after the commencement of this Act pay any sums received by him as liquidator into the private banking account of himself or any firm of which he is a member, or into any banking account other than such as is authorized by this Act. 2. Any liquidator who contravenes this section shall be guilty of a misdemeanour, and shall be liable to repay the amount so paid in with interest at the rate of twenty pounds per centum per annum, and shall be liable to disallowance of all his remuneration, and shall be removed from his office by the Court, and shall be liable to pay all costs and expenses by reason of his contravention.

Powers of liquidator. 138. 1. The liquidator of a company which is being wound up by the Court may, with the sanction either of the Court or of the committee of inspection, carry on the business of the company or bring or defend any legal proceeding in the name and on behalf of the company, or exercise any of the powers conferred by sections one hundred and forty-four and one hundred and forty-five of the principal Act. 2. The liquidator of any such company may without the sanction of the Court or of the committee of inspection exercise any of the other powers conferred on the liquidator by section ninety of the principal Act. 3. The exercise by the liquidator of the powers referred to in this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers. 4. The liquidator of a company which is being wound up by order of the Court may with the sanction either of the Court or of the committee of inspection employ a barrister and solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself. The sanction aforesaid must be a sanction obtained before the employment except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

Information as to pending liquidations. 139. 1. If the winding-up of a company is not concluded within one year after its commencement, the liquidator of the company shall at such intervals as may be prescribed until the winding-up is concluded send to the Registrar-General a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. 2. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section and to a copy thereof or extract therefrom. 3. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall be punishable accordingly on the application of the liquidator or of the official liquidator. 4. If a liquidator makes default in complying with the requirements of this section he shall be liable to a penalty not exceeding fifty pounds for each day during which the default continues, unless he proves that such default has not arisen by reason of his wilful or negligent omission. — The provisions of subsection (1) apply to companies in voluntary liquidation as well as to those in compulsory liquidation. — *In re Mercantile Finance, etc., Co.*, 25 V. L. R. 285; 21 A. L. T. 109; 5 A. L. R. 259.

Investment of surplus funds on general account. 140. 1. Whenever the cash balance standing to the credit of any company in liquidation is in excess of the amount which in the opinion of the Court or the committee of inspection is required for the time being to answer demands in respect of the estate of the company the Court or the committee of inspection may direct the liquidator to invest the said sums or any part thereof in Government securities, or place the same on deposit at interest with any bank. 2. Whenever any part of the money so invested is in the opinion of the Court or committee of inspection required to answer any demands in respect of the company's estate the Court or committee of inspection may direct the sale or realization of such part of the said securities as may be necessary.

Audit of liquidator's account. 141. 1. Every liquidator of a company which is being wound up shall at such times as may be prescribed send to the Registrar-General an account of his receipts and payments as such liquidator verified by

him by statutory declaration in the prescribed form. 2. The account shall be in a prescribed form, shall be made in duplicate, shall be audited by an auditor appointed by the Court, and shall be verified by such auditor by a statutory declaration in the prescribed form. 3. The liquidator shall cause the account or a summary thereof when audited to be printed and shall send a printed copy thereof by post to every creditor and contributory. — See *m.* (No. 1886) § 6, *infra*. — This section applies to voluntary liquidations. — In *re* Broken Hill Coffee Palace Co., 3 A. L. R. (C. N.) 57. Under subsection (2) the Court will not, as a rule, appoint an auditor recommended by the liquidator, but will appoint one independently. — In *re* South Suburban Land Co., 23 V. L. R. 434; 19 A. L. T. 169; 4 A. L. R. 21. See further as to practice under this section In *re* Goulburn Valley Butter Co., 25 V. L. R. 334; 21 A. L. T. 137; 5 A. L. R. (C. N.) 85; In *re* Empire Permanent Bldg. Society, 5 A. L. R. (C. N.) 29; In *re* Premier Permanent Bldg., etc., Association, 26 V. L. R. 403; In *re* Premier Permanent Bldg., etc., Association, 7 A. L. R. (C. N.) 13.

Books to be kept by liquidator. 142. Every liquidator of a company which is being wound up shall keep in manner prescribed proper books in which he shall from time to time cause to be made entries or minutes of proceedings at meetings and of such other matters as may be prescribed, and any creditor or contributory of the company may, subject to the control of the Court, personally or by his agent inspect any such books.

Release of liquidators. 143. 1. When the liquidator of a company which is being wound up has realized all the property of the company or so much thereof as can in his opinion be realized without needlessly protracting the liquidation, and distributed a final dividend (if any) to the creditors, and adjusted the rights of the contributories between themselves, and made a final return (if any) to the contributories, or has resigned, or has been removed from his office, the Court may cause a report on his account to be prepared, and on his complying with all the requirements of the Court shall take into consideration the report, and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator, and shall either grant or withhold the release of the liquidator accordingly. 2. Where the release of a liquidator is withheld the Court may on application of any creditor or contributory or person interested make such order as it thinks just charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty. 3. An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by misstatement, suppression, or concealment of any material fact. 4. Where the liquidator has not previously resigned or been removed his release shall operate as a removal of him from his office.

Discretionary powers of liquidator and control thereof. 144. 1. Subject to the provisions of the *Companies Acts*, the liquidator of a company which is being wound up shall in the administration of the property of the company and in the distribution thereof amongst its creditors have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection. 2. The liquidator may from time to time summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories by resolution either at the meeting appointing the liquidator or otherwise may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be. 3. The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding-up. 4. Subject to the provisions of the *Companies Acts* and to any order or direction of the Court, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to Court against liquidator. 145. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by order or under the supervision of the Court he may apply to the Court and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of Court over liquidators. 146. 1. The Court shall take cognizance of the conduct of liquidators of companies which are being wound up by order or under the supervision of the Court, and in the event of any such liquidator not faithfully performing his duties and duly observing all the requirements imposed on him by law, rules, or otherwise with respect to the performance of his duties, or in the event of any complaint being made to the Court by any creditor or contributory in regard thereto, the Court shall inquire into the matter and take such action thereon as may be deemed expedient. 2. The Court may at any time require any liquidator of a company which is being wound up by order or under the supervision of the Court to answer any inquiry made by the Court in relation to any winding-up in which the liquidator is engaged, and may if the Court thinks fit direct such person as the Court thinks fit to examine on oath the liquidator or any other person whomsoever concerning the winding-up. 3. The Court may also direct a local investigation to be made of the books, accounts, securities, vouchers, papers, writings, and documents of the liquidator of any company which is being wound up by order or under the supervision of the Court.

Disposal of books, etc. 147. 1. Where any company is being wound up under any Act, and whether by order of the Court or voluntarily, it shall be the duty of every liquidator of the company and every person to whom the custody of the documents of the company or of the liquidator has been committed to carefully preserve such documents until deposited with the Registrar-General as hereinafter provided. 2. When any such company has been wound up the liquidator or person to whom the custody of the documents of the company or of the liquidator has been committed shall so soon as he shall not require their further use deposit the same with the Registrar-General, who after retaining the same for five years from the date of the dissolution of the company may destroy the same. 3. If any person wilfully or by culpable negligence contravenes the provisions of this section he shall be guilty of a misdemeanour and shall on conviction be liable to be imprisoned for a period not exceeding two years. 4. In this section the word "documents" shall include all books, accounts, securities, vouchers, papers, writings, and documents. — E. § 222; N. S. W. a. (No. 40 of 1899) 154; T. a. (33 Vic. No. 22 182; S. A. a. (No. 557) 164; Q. e. (27 Vic. No. 4) 145; W. A. a. (56 Vic. No. 8) 166; N. Z. 252.

Priority of wages in winding-up. 148. 1. In the distribution of the assets of any company which is being wound up there shall be paid in priority to other debts: A) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the commencement of the winding-up, not exceeding fifty pounds; and B) All wages of any labourer or workman in respect of services rendered to the company during four months before the commencement of the winding-up. The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportion between themselves. 2. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the official liquidator shall discharge the foregoing debts forthwith so far as the assets of the company are and will be sufficient to meet them as and when such assets come into the hands of such liquidator. — E. § 209; N. S. W. a. (No. 40 of 1899) 134; T. c. (59 Vic. No. 19) 29; S. A. a. (No. 557) 151; Q. h. (56 Vic. No. 24) 21; W. A. a. (56 Vic. No. 8) 147; N. Z. 249. — See a. (No. 1074) § 386 — 389, and notes thereto. A clerk or servant employed in England by an English company registered in Victoria is not entitled to priority under this section. — *In re Australian Cycle and Motor Co.*, 7 A. L. R. (C. N.) 53. For the purpose of ascertaining the period of four months the presentation of the petition to the Court is deemed the commencement of the liquidation. — *In re Australian Producers & Traders*, (1908), V. L. R. 227, 14 A. L. R. 118.

Delegation to liquidator of certain powers of Court. 149. General rules may be made for requiring or enabling all or any of the powers and duties conferred and imposed on the Court by sections eighty-six, ninety-three, ninety-four, ninety-five, ninety-seven, and one hundred and two of the principal Act to be exercised or performed by the liquidator of any company as an officer of the Court, and subject to the control and review of the Court, provided that the liquidator shall not without the special leave of the Court rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

General rules and fees. 150. 1. The Court may make general rules or orders for carrying into effect the objects of this Division of this Act. 2. There shall be

paid in respect of the proceedings under this Act such fees as the Governor in Council may by regulation direct, and the Governor in Council may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid.

Returns by officers. 151. The officers of the Courts acting in the winding-up of companies shall make to the Attorney-General such returns of the business of their respective Courts and offices at such times and in such manner and form as may be prescribed, and the Attorney-General shall cause such returns or a copy thereof to be laid before both Houses of Parliament.

Application of Division. 152. 1. This Division of this Act shall not, except where it is expressed to have a more extended application, apply to any company which is being wound up in pursuance of an order made before the commencement of this Act. 2. For the purposes of this Division of this Act a company shall not be deemed to be wound up by order of the Court if the order is to continue a winding-up under the supervision of the Court.

Amendment of rule 22 for proceedings for winding-up companies. Interest on debts. 153. 1. Rule No. 22 of the seventh Schedule to the principal Act shall be repealed. 2. [As amended by l. (No. 1699) § 14.] After the passing of this Act no interest in respect to any period subsequent to the commencement of the winding-up, whether by order of the Court or under the supervision of the Court or voluntarily, of any company shall be computed charged or payable on any debt or claim due from the company and allowed admitted or claimed in the winding-up: Provided however that in every winding-up whether voluntary or compulsory which shall be commenced after the passing of this Amending Act every creditor shall be entitled to be paid interest after the rate of four pounds per centum per annum from the date of the order or resolution to wind up the company out of any assets available for distribution amongst the creditors generally which may remain after satisfying the costs of the winding-up and the debts and claims established. Nothing herein contained shall affect the right of any secured creditor to realise out of his security interest due to him since the liquidation as well as before the same, but so that he shall only be entitled to be paid out of such general assets by way of interest subsequent to liquidation the difference if any between the amount thus realised and the amount of the interest at four pounds per centum per annum as aforesaid. — Subsection (2) does not apply in the case of a voluntary winding-up. — *In re Murray River, etc.*, Agency, 25 V. L. R., 5 A. L. R. See also *In re Australian, etc., Bank*, 26 V. L. R. 686, 22 A. L. T. 177.

Interpretation of terms. 154. In this Division of this Act, unless the context otherwise requires: "General rules" means general rules made under this Act and includes forms; "Prescribed" means prescribed by general rules.

Division VIII. Defunct Companies.

[§§ 155—161 relate to procedure for striking defunct companies off the register.]

Where members fail to attend general meeting preparatory to dissolution. 162. Where the liquidators of a company which is being wound up voluntarily have convened a general meeting of the company for the purposes of and in accordance with section one hundred and twenty-eight of the principal Act, and such meeting shall not have been attended by the number of members necessary to constitute a meeting, the liquidators shall file with the Registrar-General a statutory declaration showing that the meeting was duly convened but was not attended as aforesaid, and on the expiration of three months from the date of filing such statutory declaration the company shall be deemed to be dissolved.

Division IX. Acquisition of a business by a company.

Notice of intention to form company to acquire business of any person. Notices to be entered. Company not to be registered until two months after notice. Caveat. Registrar-General to notify caveat. Summons to caveator. Question for Court. Power of Court. Withdrawal of caveat. Penalty. Creditor. Unimportant accidental omissions. Rectification of accidental omission or misstatement. "Creditor". 163. 1. No person shall directly or indirectly constitute, form, or register any company having for its object or one of its objects the acquisition or transfer of the whole or portion of the business and assets of such person or any firm of which he is a

member, nor shall any such company acquire or obtain the transfer of any such business and assets, or any portion thereof, until the person intending to register a company as aforesaid shall have lodged with the Registrar-General and advertised in two daily newspapers published in Melbourne a notice in the form or to the effect contained in the eighth Schedule to this Act, and until the said notice has been given or sent by registered letter to the creditors (if any) of such person or firm resident outside of Victoria. 2. The Registrar-General shall cause a register book to be kept wherein such notices shall be entered, and such book and notices shall be open to the inspection of all persons on payment of the prescribed fee. 3. No such company shall be registered until two months after the said notice shall have been lodged with the Registrar-General and advertised and given or sent as aforesaid, and until an affidavit of compliance with the provisions of this section shall have been filed with the Registrar-General. 4. Any creditor of the person or firm the whole or portion of whose business and assets are proposed to be acquired by or transferred to a company as aforesaid may enter a caveat against the registering of the said company as being prejudicial to or likely to hinder, defeat, or delay the claims of such creditor, and every such caveat shall be in the form or to the effect in the ninth Schedule to this Act, and no such company shall be registered until such caveat be removed or withdrawn. 5. Such caveat shall be notified by the Registrar-General to the person so intending directly or indirectly to register a company as aforesaid. 6. Such person may summon the said caveator to appear before the Court to show cause why such caveat should not be removed, and the Court may either decide the question raised or may direct an issue which shall be tried in the usual way of an action in the Court, and the Court when deciding the question without an issue or on trying the issue shall have power to order the removal of such caveat, with or without costs, or to refuse to make such order, with or without costs. 7. The question raised shall be whether the proposed transfer to the proposed company will be prejudicial to or likely to hinder, defeat, or delay the claims of such creditor. 8. The Court may at any time before or after issue tried order such removal on security being given for the payment of the debt due to such creditor as to the Court may seem proper. 9. The caveator may before the issue of the summons aforesaid withdraw the caveat without leave. After the issue of the summons the caveator may withdraw the caveat either with the written consent of the proposed transferor or company or by leave of the Court on application thereto, and upon such terms as to costs as the Court may think fit. The withdrawal shall be in the form of a notice by such caveator to the Registrar-General stating that the caveator withdraws the said caveat. 10. Any company which carries on any business, or retains control or possession of any assets transferred to or acquired by such company, or any portion of such assets, and any person who so carries on business or retains control on behalf of any such company contrary to the provisions of this Division of this Act, and the directors and the manager thereof, if it be proved that they or he had knowledge of such business or assets, or any portion thereof, having been so transferred to or acquired by such company, shall for every day which such company so carries on such business or retains possession or control of such assets or any portion thereof each be liable to a penalty not exceeding five pounds, and shall be liable to make compensation to any person sustaining loss by reason of the said transfer or acquisition. 11. A person holding security over property of the proposed transferor shall be deemed to be a creditor within the meaning of this section only for the sum due after estimating and giving credit for the value of his security. Such estimate and credit shall be made in an affidavit or statutory declaration which shall accompany the caveat and be lodged with the Registrar-General therewith, and shall shortly state the material particulars of the claim and the security and the value thereof. 12. A notice lodged in pursuance of this section shall not be invalid merely by reason of any accidental or inadvertent omission or misstatement therein, provided that the same substantially discloses the nature of the proposed transfer, and that such omissions or misstatements are not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage. 13. The Court, on being satisfied that the omission or misstatement of any particular was accidental or due to inadvertence, and was not of such a nature as to be liable to mislead or deceive any person to his prejudice or disadvantage, may, on the application of any person interested, and on such terms and conditions as seem to the Court just and expedient, order that

such omission or misstatement be rectified. 14. In this section the word "creditor" means any person to whom the proposed transferor is indebted on any account whatsoever, at law or in equity, on the balance of account or otherwise, and whether the debt is due or to accrue due, or secured or unsecured. 15. Any person not a creditor entering a caveat without reasonable cause for considering himself to be a creditor, and any caveator refusing without reasonable cause to sign an application for withdrawal of his caveat after satisfaction of his debt, shall be liable to pay the transferor or transferee such sum by way of compensation as the Court upon the hearing of any such summons may deem just and may order. — Cp. g. (No. 1488) § 2, *infra*.

Division X. Miscellaneous.

Effect of certain notices and certificates. 164. 1. The notice mentioned in section eighteen of the *Companies Act, 1890*, the certificate mentioned in section twenty-two of the said Act, and the certificate of incorporation mentioned in this Act shall respectively be in all criminal proceedings *prima facie* evidence, and in all other proceedings conclusive evidence of due registration and of the time of registration, and also that all requirements, requisitions, and provisions of the *Companies Acts* with reference to all matters prior and necessary to incorporation, registration, and change of name respectively have been duly complied with. 2. This section shall extend to all companies whether registered before or after the commencement of this Act. — See note to N. S. W. a. (No. 40 of 1899) § 17.

Proceedings not invalidated by irregularities. 165. 1. No proceeding taken under the *Companies Acts*, either before or after the commencement of this Act, shall be invalidated by any defect, irregularity, or deficiency of notice or time, unless the Court is of opinion that substantial injustice has been caused by such defect, irregularity, or deficiency, and that such injustice cannot be remedied by any order of such Court. 2. The Court may if it think fit make an order declaring that such proceeding is valid notwithstanding any such defect, irregularity, or deficiency. — *Quære*, whether a forfeiture of shares where the regulations of Table A of the *Companies Act, 1890*, are applicable by virtue of § 15 of that Act, is a "proceeding" within the meaning of this section. — *Gray v. Stevenson & Sons*, 25 V. L. R. 476; 21 A. L. T. 185; 6 A. L. R. 25. But, in general, full effect is to be given to the provisions of this section. — *Montgomerie's Brewery Co. v. Spencer*, 20 A. L. T. 260; 5 A. L. R. 112.

List of directors to be sent to Registrar-General. 166. Every company shall keep at its registered office a register containing the names, addresses, and occupations of its directors and manager; and such company by its manager shall send to the Registrar-General a copy of such register, and shall from time to time notify to him any change that takes place in such directors or manager or in their addresses. — See a. (No. 1074) § 45, and note thereto.

Holder of scrip may be required to bring in scrip to company. Person refusing to bring in scrip may be brought before Court or Judge. List of scrip called in for cancellation to be exhibited. 167. 1. On being requested in writing so to do by the transferor of a share in a company, the company shall by writing require the person having the possession, custody, or control of any such share, scrip, and transfer to bring the same into the office of the company within a period named in such requisition, not less than seven days from the date thereof, to be cancelled, rectified, or the transfer thereof registered or otherwise dealt with as the case may require. 2. If any person refuses or neglects to comply with any such requisition as aforesaid, the said transferor may apply to a Judge to issue a summons for such person to appear before the Court and show cause why the documents mentioned in such requisition should not be delivered up or produced for the purpose mentioned in such requisition; and upon appearance before the Court of any person so summoned it shall be lawful for the Court to examine such person upon oath, and to receive other evidence, or if he do not appear after being duly served with such summons, then to receive evidence in his absence, and whether such person do or do not appear (in case the same shall seem proper) to order such person to deliver up such documents to the company upon such terms or conditions as to such Court shall seem fit, and the cost of the summons and proceedings thereon shall be in the discretion of the Court. 3. Lists of share scrip called in as aforesaid and not brought in shall be exhibited in the company's office and shall be advertised in the *Government Gazette* and in such newspapers and at such time or times as the company shall think fit.

Transfers to infants to avoid liability. Transfers to avoid liability ineffectual for such purpose in certain cases. 168. 1. The transfer after the commencement of this Act of a share in any company or society to an infant for the purpose of avoiding or evading liability with regard to such share shall not relieve the transferor of any such liability. 2. No transfer after the commencement of this Act of a share in any company or society made for the purpose of avoiding or evading liability with regard to such share shall relieve the transferor of any such liability if the transfer is made to any person for a nominal consideration, or for no consideration, or for valuable consideration expressed but not paid to the transferor, or for a consideration paid to the transferee, or with a trust or reservation expressed or implied for the benefit of the transferor, or to a person known to the transferor to be unable to pay the liability on such share, unless such transfer shall have been made and registered two years before the company or society shall be wound up. — It was once held that an absolute transfer of shares, though made to avoid payment of calls, is not *per se mala fide*. — *Sleep v. Virtue*, 2 V. R. (L.) 29; 2 A. J. R. 20. For a case illustrating the principle of subsection (2), decided in 1893; see *Victorian Mortgage, etc., Bank v. Australian Financial Agency*, 19 V. L. R. 680; 15 A. L. T. 31. A contract between the directors and a creditor, who is also a shareholder, releasing him from all liability on future calls in consideration of a release by him of a debt due *in praesenti* is not within this section. — *McLean Bros. & Rigge v. Grice*, (1906), V. L. R. 610; 28 A. L. T. 14; 12 A. L. R. 324.

Company to transfer shares in register on application. 169. A company or society shall have the same obligation on the application of the transferor of any share or interest in the company or society to enter in its register of members the name of the transferee of such shares or interest as if the application for such entry were made by the transferee. — E. § 28; N. S. W. a. (No. 40 of 1899) 56; T. c. (59 Vic. No. 19) 10; S. A. a. (No. 557) Sched. II. 18; Q. f. (53 Vic. No. 18) 30; W. A. (56 Vic. No. 8) Sched. II. 18; N. Z. 34.

[§§ 170—173 relate to the recovery of penalties.]

[§ 174 empowers the Governor in Council to make regulations, alter the forms set forth in the Schedules, and the fees prescribed.]

Expense of winding-up where assets are not sufficient. 175. Where a company being wound up either by the Court or voluntarily has not sufficient available assets, the liquidator shall not be required to incur any expense in relation to the winding-up without the express direction of the Attorney-General.

Court may determine whether a company certified as a proprietary company is a proprietary company. 176. The Court may, on the application of the Attorney-General or Solicitor-General, or of any member, shareholder, or creditor of any company certified by the Registrar-General as a proprietary company, determine whether such company is a proprietary company within the meaning of this Act, and if the Court determine that it is not a proprietary company, then the company shall be a limited company under this and the principal Act, and subject to all the provisions and conditions therein contained, except those relating to proprietary companies.

Schedules.

First Schedule.

Number of Act.	Short Title of Act.	Extent of Repeal.
No. 1068. No. 1074.	<i>Building Societies Act, 1890.</i> <i>Companies Act, 1890.</i>	Section twenty-seven. In section thirteen, the words "but save as aforesaid no alteration shall be made by any company in the conditions contained in its memorandum of association." Section eighty-seven. Section ninety-two. Section one hundred and forty. Section one hundred and fifty-two and section three hundred and eighty-seven.
No. 1269.	<i>Companies Act Amendment Act, 1892.</i>	Section nine.

*Second Schedule.***Memorandum and manager's declaration.**

1. The name of the company is No Liability.
2. The objects of the company are [*set out the objects of the company*]:
3. The number of shares in the company is of each.
4. The amount already paid up per share is
5. The number of shares subscribed for is
6. The names and addresses, and occupations of the shareholders, and the number of shares held by each, and the amount paid up at this date, are as follow:

Manager.

I do solemnly and sincerely declare that I am the manager of the said intended company.

2. That the above statement is to the best of my belief and knowledge true in every particular. And I make, etc.

Declared, etc.

before me

A. B.

J. P.

Shareholders' declaration.

1. The name of the company is No Liability.
2. The objects of the company are [*set out the objects of the company*]:
3. The number of shares in the company is of each.
4. The amount already paid up per share is
5. The number of shares subscribed for is
6. The names and addresses and occupations of the shareholders, and the number of shares held by each, and the amount paid up at this date, are as follow.

Shareholders.

1. We, the undersigned, do solemnly and sincerely declare that we are shareholders of the said intended company.

2. That the above statement is to the best of our belief and knowledge true in every particular. And we each make, etc.

Declared, etc.

before me

A. B.

J. P.

[Schedules III. to VI. contain forms.]

*Seventh Schedule.***Meetings of creditors and contributories.**

1. The meetings of creditors and contributories shall be held within twenty-one days after the date of the winding-up order, or within such further time as the Court may approve, unless a special manager has been appointed, in which case such meetings shall be held within one month from the date of such order or within such further time as aforesaid.

2. The official liquidator of the company or society shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the *Government Gazette* and in a local paper. Notice of such meeting shall also be sent by post to every person appearing by the books to be a creditor of the company or society and to every member thereof.

3. The meeting shall be held at such place as is, in the opinion of the official liquidator, most convenient for the majority of the creditors and contributories.

4. The official liquidator, or some person nominated by him, shall be the chairman at the meetings.

5. A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him, and the proof has been duly lodged before the time appointed for the meeting.

6. A creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained.

7. For the purpose of voting a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

8. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company or society and against whom an order of sequestration in insolvency has not been made, as a security in his hands and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

9. It shall be competent to the official liquidator within twenty-eight days after a proof estimating the value of a security as aforesaid had been made use of in voting at any meeting to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated.

10. The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting but his decision shall be subject to appeal to the Court. If he is doubtful whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

11. A creditor or a contributory may vote either in person or by proxy.

12. a) Every instrument of proxy shall be in the prescribed form and shall be issued by an official liquidator, and every written part thereof shall be in the handwriting of the person giving the proxy or of any manager, or clerk, or other person in his regular employment, or of a commissioner of the Supreme Court for taking affidavits, or a commissioner for taking declarations and affidavits, and in case any such written part thereof is in the handwriting of any person other than the person giving the proxy the said instrument shall set forth the name and description of the person in whose handwriting such written part has been made.

b) Unless the provisions of this paragraph are complied with the instrument of proxy shall be invalid.

c) In case of dispute as to compliance with the provisions of this paragraph the burden of proof shall be upon the person claiming to use the instrument of proxy.

13. General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the official liquidator or of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

14. A creditor or a contributory may give a general proxy to his manager or clerk or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

15. A creditor or contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof: a) For or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and b) On all questions relating to any matter other than those above referred to and arising at any specified meeting or adjournment thereof.

16. A proxy shall not be used unless it is deposited with the official liquidator before the meeting at which it is to be used.

17. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring the appointment of liquidator, except by the direction of a meeting of creditors or contributories, the Court shall have power if it think fit to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

18. A creditor or a contributory may appoint the official liquidator to act in manner prescribed as his general or special proxy.

19. The chairman of the meeting may with the consent of the meeting adjourn the meeting from time to time and from place to place.

20. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat at least three creditors or contributories or all the creditors or contributories if their number does not exceed three.

21. If within half-an-hour from the time appointed for the meeting a quorum of creditors or contributories is not present or represented the meeting shall be adjourned to the same day in the following week, at the same time and place, or to such other day as the chairman may appoint not being less than seven or more than twenty-one days.

22. The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

23. No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner, or employer, or any company or society of which he is a director, manager, principal officer, or secretary in a position to receive any remuneration out of the estate of the company otherwise than as a creditor ratably with the other creditors of the company: Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment for himself as liquidator he may use the said proxies and vote accordingly.

24. In this Schedule the expression "official liquidator" shall include and be taken to refer to the liquidator where he is not the official liquidator.

[Schedules VIII. and IX. contain forms.]

g) 61 Vic. No. 1488. An Act to amend the Companies Act, 1896 (6th August, 1897).

[§ 1 amends f. (No. 1482) § 31.]

Division IX. of No. 1482 not to apply to certain companies. 2. Division IX. of the *Companies Act, 1896*, shall not apply to any company incorporated in pursuance of any scheme of arrangement or compromise heretofore or hereafter sanctioned by the Court under the *Companies Acts* if the incorporation of such company and the objects for which it is to be incorporated have been expressly provided for in such scheme of arrangement or compromise.

h) 61 Vic. No. 1497. An Act to provide for the Keeping of Branch Registers by No-Liability Mining Companies (6th September, 1897).

i) 61 Vic. No. 1502. An Act to remove certain Doubts as to the Operation of Section thirty-one of the Companies Act, 1896 (6th September, 1897).

j) 61 Vic. No. 1541. An Act relating to Defunct Companies (21st December, 1897).

(Provides that the Registrar shall act as representative of defunct companies in certain events; manner of execution of deeds and instruments; vesting and disposition of assets of company; liability of Registrar and of Crown for property vested under Act; accounts and statements.)

k) 64 Vic. No. 1645. An Act relating to Certain General Rules and Orders made under the Companies Act, 1896 (19th February, 1900).

(Provides for the validation of certain rules made by the Supreme Court under powers conferred by the *Companies Act, 1896*.)

l) 64 Vic. No. 1699. An Act to amend the Provisions of the Companies Act, relating to Life Assurance, and for other Purposes (17th October, 1900).

m) 3 Edw. 7, No. 1886. An Act to amend the Companies Acts, and for other Purposes (24th December, 1903).

Short title and citation. 1. This Act may be cited as the *Companies Act, 1903*, and this Act and the *Companies Acts* may be cited together as the *Companies Acts*.

Amendment of section 53 of No. 1482. 2. Immediately after sub-section 1 of section fifty-three of the *Companies Act, 1896*, there shall as and from the commencement of the said Act be deemed to have been inserted the following sub-section: 1a. No such mortgage shall require to be filed or registered under the provisions of the *Instruments Act, 1890*, or the *Book Debts Act, 1896*, anything contained in such Acts or any Acts amending the same to the contrary notwithstanding. And immediately after sub-section 7 of the same section there shall as and from the commencement of the said Act be deemed to have been inserted the following sub-section: 7a. The Registrar-General on payment of the prescribed fees shall give a certificate under this hand of the registration of any mortgage registered in pursuance of this section stating the amount thereby secured which certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with.

Qualification. 3. Nothing in this Act shall be deemed to render valid any mortgage (created by a company) which before the passing of this Act has been declared invalid or been set aside by any court of competent jurisdiction.

[§ 4 amends l. (No. 1699) § 3.]

[§ 5 amends f. (No. 1482) § 2, *supra*, and is there incorporated.]

Auditing of liquidator's account under section 141 of No. 1482. 6. The liquidator's account referred to in section one hundred and forty-one of the *Companies Act, 1896*, shall be audited by a licensed auditor appointed by the Court, practising in or near the place where the company carried on business and such appointment may be for the whole period of the liquidation.

[§ 7 amends a. (No. 1074) § 221.]

n) 6 Edw. 7, No. 2039. An Act to further amend the law relating to Companies (14th December, 1906).

Short title and construction. 1. This Act may be cited as the *Companies Act, 1906*, and shall be read and construed as one with each Part of the *Companies Act, 1890*, and any Act amending the same, all of which Acts and this Act may be cited together as the *Companies Acts*.

Power for companies to have official seal for all outside Victoria. 2. 1. Any company registered under any of the provisions of the Companies Acts whether before or after the commencement of this Act whose objects require or comprise the transaction of any business whatsoever in any country, state, or colony situate out of Victoria in which business of the company is carried on may cause to be prepared an official seal to be used in any such country, state, or colony. 2. Every such official seal shall be as nearly as practicable a facsimile of the common seal of the company, with the exception that on the face thereof there shall be inscribed the name of the country, state, or colony in and for which it is to be used. 3. Any company may from time to time break up and renew any such official seal.

Power to companies to appoint agent abroad to affix seal. 3. Any company having or using an official seal as aforesaid may from time to time by any instrument in writing under its common seal empower either generally or in respect of any specified matters any person in any country, state, or colony where the business of the company is for the time being carried on, and for which an official seal as aforesaid has been prepared, to affix such official seal to any deed, contract, or other instrument to which the company is a party in such country, state, or colony. In pursuance of such authority such official seal may be affixed accordingly to any deed, contract, or other instrument.

Duration of powers granted to agent. 4. As between the company on the one hand and the person named in the instrument conferring the power, and all persons dealing with him on the other hand, such instrument shall continue in force during the period, if any, mentioned therein, or if no period is therein mentioned then until notice of the revocation or determination of the power shall have been given by the company to such person or persons as aforesaid.

Person affixing seal to document to certify date when so affixed. 5. 1. Whenever an official seal as aforesaid is affixed to a document the person affixing the same shall, by writing under his hand and written on the document to which the seal is affixed, certify the date when and the place where the same was affixed. 2. Any document to which any official seal as aforesaid shall have been affixed within the country, state, or colony the name whereof is inscribed on such seal shall bind the company in the same way and to the same extent, and have the same force and effect as if it had been sealed with the common seal of the company.

How companies to exercise power. 6. The powers given by this Act shall be exercised only by any company which is expressly authorized to exercise the same by its articles of association, or rules, or regulations, or by a special resolution, or a resolution passed at an extraordinary meeting, as the case may be, according to the provisions of the *Companies Acts*, and shall be exercised by such company subject to any directions or restrictions in the said articles of association, rules, regulations, or resolutions contained of the company.

[§ 7 amends a. (No. 1074) § 221 and m. (No. 1886) § 7.]

o) 7 Edw. 7, No. 2079. An Act to further amend the Companies Acts (13th August, 1907).

Short title and citation. 1. This Act may be cited as the *Companies Act, 1907*, and this Act and the *Companies Acts, 1890*, and any Act amending the same may be cited together as the *Companies Acts*.

[§ 2 repeals the *Companies Act Amendment Act, 1906*. (No. 2073).]

[§ 3 amends f. (No. 1482) § 31 (2) (b), *supra*, and is there incorporated.]

[§ 4 relates to the qualification of auditors.]

p) 8 Edw. 7, No. 2156. An Act relating to the Name, Style, or Title of Companies (16th November, 1908).

Short title. 1. This Act shall be called and may be cited as the *Companies Names Act, 1908*.

Restriction on use in company's name of "empire" or "imperial". 2. 1. Notwithstanding anything contained in any Act, no company, association, or partnership the name, style, or title of which includes the word "empire" or the word "imperial" shall be registered in Victoria as a company, unless the Governor in Council by order published in the *Government Gazette* consents to the use of such word in the name, style, or title of such company. 2. Such consent shall not be granted to a company, whether incorporated in Victoria or elsewhere, if in the opinion of the Governor in Council the use of such word by such company would imply or be likely to convey the impression that such company is wholly or partly authorized or supported by, or connected with His Majesty's Government in England, or Victoria, or any part of His Majesty's Dominions.

q) 1 Geo. 5, No. 2293. An Act to consolidate and amend the law relating to Companies and for other Purposes (4th January, 1911).¹⁾

Short title and commencement. 1. This Act may be cited as the *Companies Act, 1910*, and shall come into operation on the thirty-first day of January, One thousand nine hundred and eleven. — E. § 205.

Repeal of Acts and transitional provisions.

Repeal of Acts and savings. 2. 1. The Acts mentioned in the first Part of the fourth Schedule to this Act are hereby repealed to the extent specified in the third column of that Part: Provided that the repeal shall not affect: a) The incorporation of any company registered under any enactment hereby repealed; nor b) Table A in the first Schedule annexed to the *Companies Act, 1890*, or any part thereof (either as originally contained in that Schedule or as altered in pursuance of section seventy of that Act) so far as the same applies to any company existing at the commencement of this Act. 2. The mention of particular matters in this section or in any other section of this Act shall not prejudice the general application of section twenty-seven of the *Acts Interpretation Act, 1890*, with regard to the effect of repeals. — E. § 286.

Saving of pending proceedings for winding up. 3. The provisions of this Act with respect to winding-up shall not apply to any company of which the winding-up has commenced before the commencement of this Act, but every such company shall be wound up in the same manner and with the same incidents as if this Act had not passed and for the purposes of the winding-up the Act or Acts under which the winding-up commenced shall be deemed to remain in full force. — E. § 287.

¹⁾ The references in the notes (E.) are to the *Imperial Companies (Consolidation) Act, 1908*, (8 Edw. 7, c. 69). In view of the fact that numerous references in other parts of this volume are to the Victorian Acts repealed by *The Companies Act, 1910*, it was thought advisable to reprint the repealed Acts. A table showing how the sections of the consolidated Acts have been dealt with in the new Act will be found *infra*.

Saving of deeds. 4. Every conveyance, mortgage, or other deed made before the commencement of this Act in pursuance of any enactment hereby repealed shall be of the same force as if this Act had not passed, and for the purposes of that deed the repealed enactment shall be deemed to remain in full force. — E. § 288.

Saving for existing rules of procedure, etc. 5. Until revoked and except as varied under the powers of this Act the general rules and regulations and scales of fees under the Companies Acts in force at the commencement of this Act and the rules of Court in force at the commencement of this Act with respect to winding-up companies and the practice and procedure for reducing capital and winding-up companies in force at the commencement of this Act shall so far as they are not inconsistent with this Act continue in force. — E. § 290.

Substitution of provisions of this Act for provisions of repealed Acts. 6. Where any enactment repealed by this Act is mentioned or referred to in any document that document shall be read as if the corresponding provision (if any) of this Act were therein mentioned or referred to and substituted for the repealed enactment. — E. § 291.

Saving for Parts II. III. and IV. of Companies Acts. 7. Nothing in this Act shall affect the provisions of Parts II. III. or IV. of the *Companies Act, 1890*, except that references in that Act to any provision of the *Companies Act, 1890*, or any Act repealed by this Act shall be read as references to the corresponding provision of this Act. — E. § 293.

Interpretation, etc.

Interpretation. 8. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them (that is to say): “Articles” means the articles of association of a company as originally framed or as altered by special resolution, including so far as they apply to the company the regulations contained (as the case may be) in Table A in the first Schedule annexed to the *Companies Act, 1890*, or in that Table as altered in pursuance of section seventy of that Act or in Table A in the first Schedule to this Act; “Books and papers” and “books or papers” include accounts, deeds, writings, and documents; “Company” means a company formed and registered under this Act or an existing company; “Debenture” includes debenture stock; “Director” includes any person occupying the position of director by whatever name called; “Document” includes summons, notice, order, and other legal process and registers; “Existing company” means a company formed and registered under or subject to Part I. of the *Companies Act, 1890*; “General rules” means general rules made under this Act and includes forms; “Manager” includes managing director secretary or principal executive officer by whatever designation he is styled; “Memorandum” means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act; “Mortgage” includes agreement to give a mortgage; “Prescribed” means as respects the provisions of this Act relating to the winding-up of companies prescribed by general rules and as respects the other provisions of this Act prescribed by the Governor in Council; “Prospectus” means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of a company; “Share” means share in the share capital of the company and includes stock except where a distinction between stock and shares is expressed or implied; “Society” means any society registered or deemed to be registered under the *Building Societies Act, 1890*; “The Court” means the Supreme Court or a Judge thereof; “The Registrar-General” includes any duly appointed Deputy Registrar-General and where used in connexion with or relating to societies shall so far as only societies are concerned be construed to mean Registrar of Building Societies. — E. § 285 A company registered under this Part of this Act, though formed for mining purposes is not a “person” or “elective body corporate” within *Mines Act, 1890* (No. 1120), § 49, 50. — *Moe C. M. Co. v. Lithgow*, 20 V. L. R. 20; 15 A. L. T. 222. A company in which all of the shares are owned by a single individual, who is the manager, and who registers the shares in the names of persons who hold for him, is nevertheless distinct from such person. — *Goulburn Valley etc., Co. v. Bank of N. S. W.*, 25 V. L. R. 702; 22 A. L. T. 36; 6 A. L. R. 216; affirmed, 26 V. L. R. 351; 22 A. L. T. 76; 6 A. L. R. 216.

Part I. Constitution and Incorporation.

Prohibition of large partnerships.

Prohibition of partnerships exceeding certain number. 9. 1. No company, association, or partnership consisting of more than ten persons shall be formed for the

purpose of carrying on the business of banking unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament or of letters patent. 2. No company, association, or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament or of letters patent. — E. § 1.

Memorandum of association.

Mode of forming incorporated company. 10. Any five or more persons (or where the company to be formed will be a proprietary company within the meaning of this Act, any two or more persons) associated for any lawful purpose may by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration form an incorporated company with or without limited liability (that is to say) either: i) A company having the liability of its members limited by the memorandum to the amount if any unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or ii) A company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or iii) A company not having any limit on the liability of its members (in this Act termed an unlimited company. — E. § 2. Where a sale of goods to the defendants as directors and manager of a company was proved, and the defendants pleaded that the company had not been properly registered, and that as a partnership it was illegal under this section because consisting of more than twenty members, it was held that it was not competent for the defendants to prove the illegality, and that they were liable for the price of the goods. — *Masterton v. Blair*, 2 V. R. (L.) 19; 2 A. J. R. 16. A syndicate consisting of more than twenty persons, formed for the purpose of purchasing a large block of land, of sub-dividing it and reselling it in small allotments, is not such a company, association, or partnership. — *Ballantyne v. Raphael*, 15 V. L. R. 538; 11 A. L. T. 34. The memorandum, in order to bind subscribers for shares, must substantially carry out the plan outlined in the prospectus. — *Bowman v. Homan*, 1 W. & W. (L.) 390. — **ULTRA VIRES.** — Any transaction which is not expressly or by reasonable implication within the objects of the company, as stated in the memorandum of association construed as a whole in a reasonable way is *ultra vires*. — *Mountain Homes, etc., Co. v. Marshall*, 17 V. L. R. 545; 13 A. L. T. 39. Such an act can not be ratified except with the consent of all of the shareholders. A majority can not bind a dissentient minority. But the circumstances may be such that all the shareholders will be deemed to have acquiesced. — *In re Beaconsfield Heights Estate Co.*, 22 V. L. R. 97; 17 A. L. T. 245; 2 A. L. R. 35. But *ultra vires* acts of companies constituted by Act of Parliament can not be ratified with the consent of all the shareholders. The public has an interest in not having the directors exceed their powers. — *Lee v. Robertson*, 1 W. & W. (E.) 374, 386. And acquiescence by the shareholders is not acquiescence by the company. — *Creswick Grand Trunk G. M. Co. v. Hassall*, 5 W. W. & a' B. (E.) 49, 83. A rule that if general meetings for the election of directors be not held at the times appointed, the directors shall continue in office indefinitely, and be considered as re-elected, is *ultra vires* (under Act No. 228, § 39). — *Schmidt v. Garden Gully Co.*, 4 A. J. R. 137. A resolution passed at a meeting of shareholders to "write off" part of the paid-up capital account is *ultra vires*. — *In re Provincial & Suburban Bank*, 2 A. L. T. 47. A collusive proceeding to execution upon the property of a company and a sale thereunder to a new company is invalid. — *United Hand-in-Hand, etc., Co. v. National Bank*, 2 V. L. R. (E.) 206, 217, 218. A purchase by a company of its own shares, where the articles of association authorised such purchase, but no express power to that effect was contained in the memorandum of association, is *ultra vires*. — *In re Colonial, etc., Co.*, 19 V. L. R. 381; 15 A. L. T. 67. A power to lend money upon the security of shares, and to do all other things that may be conducive to the attainment of any of its objects does not authorise the purchase of shares in another company on speculation; but where money has been advanced upon the security of shares the company is authorised to complete its security by becoming the registered owner thereof. — *Victorian, etc., Bank v. Australian Financial Agency*, 19 V. L. R. 680; 15 A. L. T. 31. A sale of the assets of a company in consideration, wholly or in part, of the allotment to the company of shares in another company, operating in another colony, though authorised by a majority of the stockholders, is *ultra vires*. — *Manning v. Tewksbury Freehold Gold Dredging Co.*, (1908) V. L. R. 50. For further applications of the general doctrine, and interpretation of particular powers granted, see *Goulburn Valley Butter Factory Co. v. Bank of N. S. W.*, 25 V. L. R. 702; 22 A. L. T. 36; 6 A. L. R. 216; *In re Melbourne Locomotive, etc., Works*, 21 V. L. R. 442; 17 A. L. T. 213; 2 A. L. R. 7; *In re Beaconsfield Heights Estate Co.*, 22 V. L. R. 97; 17 A. L. T. 245; 2 A. L. R. 35; *In re Quartz Hill G. M. Co.*, 27 A. L. T. Supp. 13; 12 A. L. R. (C. N.) 11. But where an act is within the express or implied powers of the company,

but the rules of the company prescribe certain preliminaries or conditions to their exercise, the company is bound. The public in dealing with the company need look only to the memorandum, and not to the rules of internal management. — *In re Tyson's Reef Co.*, 3 W. W. & a' B. (L.) 162. But if a person dealing with the company is aware of a violation of such a rule of management he may be precluded from recovering. — *Colonial Bank v. Loch Fyne Co.*, 3 W. W. & a' B. (L.) 168. As to the form of suit by the dissentient shareholders, see *Creswick Grand Trunk G. M. Co. v. Hassall*, 5 W. W. & a' B. (E.) 49, 79; *Nankivell v. Benjamin*, 18 V. L. R. 543.

Memorandum of company limited by shares. 11. In the case of a company limited by shares: 1. The memorandum must state: i) The name of the company with "Limited" as the last word in its name; ii) The objects of the company; iii) That the liability of the members is limited; iv) The amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount. 2. No subscriber of the memorandum may take less than one share. 3. Each subscriber must write opposite to his name the number of shares he takes. — E. § 3.

Memorandum of company limited by guarantee. 12. In the case of a company limited by guarantee: 1. The memorandum must state: i) The name of the company with "Limited" as the last word in its name; ii) The objects of the company; iii) That the liability of the members is limited; iv) That each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges, and expenses of winding-up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount. 2. If the company has a share capital: i) The memorandum must also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount; ii) No subscriber of the memorandum may take less than one share; iii) Each subscriber must write opposite to his name the number of shares he takes.

Memorandum of unlimited company. 13. In the case of an unlimited company: 1. The memorandum must state: i) The name of the company; ii) The objects of the company. 2. If the company has a share capital: i) No subscriber of the memorandum may take less than one share; ii) Each subscriber must write opposite to his name the number of shares he takes. — E. § 4.

Signature of memorandum. 14. The memorandum must be signed by each subscriber in the presence of at least one witness who must attest the signature. — E. § 6.

Restriction on alteration of memorandum. 15. A company may not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act. — E. § 7. For a case where dissentient shareholders were not bound by an alteration, see *In re Provincial, etc., Bank*, 6 V. L. R. (E.) 145. The power to increase capital by forcing new shares on existing shareholders must be expressed in the clearest language. — *In re Victoria Sugar Co.*, 14 V. L. R. 471.

Name of company and change of name. 16. 1. A company may not be registered by a name identical with that by which a company in existence is already registered or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Registrar-General requires. 2. If a company through inadvertence or otherwise is without such consent as aforesaid registered by a name identical with that by which a company in existence is previously registered or so nearly resembling it as to be calculated to deceive the first-mentioned company may with the sanction of the Registrar-General change its name. 3. Any company may by special resolution and with the approval of the Governor in Council signified in writing change its name. 4. Where a company changes its name the Registrar-General shall enter the new name on the register in place of the former name and shall issue a certificate of incorporation altered to meet the circumstances of the case. 5. The change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name. — E. § 8.

Alteration of objects of company. 17. 1. Subject to the provisions of this section a company may by special resolution alter the provisions of its memorandum with

respect to the objects of the company so far as may be required to enable it: a) To carry on its business more economically or more efficiently; or b) To attain its main purpose by new or improved means; or c) To enlarge or change the local area of its operations; or d) To carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or e) To restrict or abandon any of the objects specified in the memorandum. 2. The alteration shall not take effect until and except in so far as it is confirmed on petition by the Court. 3. Before confirming the alteration the Court must be satisfied: a) That sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will in the opinion of the Court be affected by the alteration; and b) That with respect to every creditor who in the opinion of the Court is entitled to object and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined or has been secured to the satisfaction of the Court: Provided that the Court may in the case of any person or class for special reasons dispense with the notice required by this section. 4. The Court may make an order confirming the alteration either wholly or in part and on such terms and conditions as it thinks fit and may make such order as to costs as it thinks proper. 5. The Court shall in exercising its discretion under this section have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors, and may if it thinks fit adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement: Provided that no part of the capital of the company may be expended in any such purchase. 6. An office copy of the order confirming the alteration together with a printed copy of the memorandum as altered shall within fifteen days from the date of the order be filed by the company with the Registrar-General, and he shall register the same and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company. The Court may by order at any time extend the time for the filing of documents with the Registrar-General under this section for such period as the Court may think proper. 7. If a company makes default in filing with the Registrar-General any document required by this section to be filed with him the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default. — E. § 9. The Court will not sanction an alteration the object of which is merely to interpret existing articles, or to make them more clear. The confirmation of any alterations is within the discretion of the Court. — *In re Australian Widows', etc.*, 24 V. L. R. 613; 4 A. L. R. (C. N.) 93. For a case where the Court refused to confirm alterations under (A) and (C) see *In re National Mutual Life Association*, 26 V. L. R. 490; 22 A. L. T. 109; 6 A. L. R. 239.

Articles of association.

Registration of articles. 18. 1. There may in the case of a company limited by shares and there shall in the case of a company limited by guarantee or unlimited be registered with the memorandum articles of association signed by the subscribers to the memorandum and prescribing regulations for the company. 2. Articles of association may adopt all or any of the regulations contained in Table A in the first Schedule to this Act. 3. In the case of an unlimited company or a company limited by guarantee the articles if the company has a share capital must state the amount of share capital with which the company proposes to be registered. 4. In the case of an unlimited company or a company limited by guarantee if the company has not a share capital the articles must state the number of members with which the company proposes to be registered for the purpose of enabling the Registrar-General to determine the fees payable on registration. — E. § 10. The articles of association and the regulations thereunder must be in accordance with the terms of the Act. — *Schmidt v. Garden Gully Co.*, 4 A. J. R. 66, 137. — Where under the regulations of a company directors are elected by a resolution the power to rescind resolutions at a subsequent extraordinary general meeting does not include a power to rescind such election. — *Schaw v. Wekey*, 1 V. R. (L.) 205; 1 A. J. R. 161; *Aberfeldie G. M. Co. v. Walters*, 2 V. L. R. E.) 116.

Application of Table A. 19. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or if articles are registered in so far as the articles do not exclude or modify the regulations in Table A in the first Schedule to this Act those regulations shall so far as applicable be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles. — E. § 15.

Form and signature of articles. 20. Articles must: a) Be printed; b) Be divided into paragraphs numbered consecutively; c) Be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature. — E. § 12. *Cp. Gillespie & Co. v. Reid*, (1905), V. L. R. 101; 26 A. L. T. 154; 11 A. L. R. 12.

Alteration of articles by special resolution. 21. Subject to the provisions of this Act and to the conditions contained in its memorandum a company may by special resolution alter or add to its articles, and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution. — E. § 13.

General provisions.

Effect of memorandum and articles. 22. 1 The memorandum and articles shall when registered bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member and contained covenants on the part of each member his heirs, executors, and administrators to observe all the provisions of the memorandum and of the articles subject to the provisions of this Act. 2. All money payable by any member to the company under the memorandum or articles shall be a specialty debt due from him to the company. — E. § 14.

Registration of memorandum and articles. 23. The memorandum and the articles (if any) shall be filed with the Registrar-General and he shall retain and register them. — E. § 15. In proof of the incorporation of a company, a *Government Gazette* was put in evidence, purporting to be a certificate that the company had been registered by the subscriber, *Henry Krone, Acting Registrar-General. Held*, there had been a full compliance with the requirements of this section as to the certificate being signed by the Registrar-General. — *Union Finance, etc., Co. v. Woolcott*, 15 V. L. R. 504; 11 A. L. T. 64; *Reg. v. Walter*, 5 A. J. R. 25. — The court will assume that the officer has published this notice, and mere absence of proof will not justify the court in saying that the company has not been duly registered and wholly incorporated under the Act. — *In re Hall*, 10 A. L. T. 30.

Effect of registration. 24. 1. On the registration of the memorandum of a company the Registrar-General shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited and in the case of a proprietary company that the company is a proprietary company. 2. From the date of incorporation mentioned in the certificate of incorporation the subscribers of the memorandum together with such other persons as may from time to time become members of the company shall be a body corporate by the name contained in the memorandum capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act. — E. § 16. Where the registration is defective a person who has signed the deed of association, is not estopped from showing that the recitals in the deed are erroneous. — *Reeves v. Greene*, 6 W. W. & a' B. (L.) 87. Where a declaration avers that a company is "registered", and such allegation is not traversed, it will be deemed to be admitted. — *Wellington, etc., Co. v. Lambrick*, 1 V. R. (L.) 13; 1 A. J. R. 26. Evidence showing that a company is carrying on business in New South Wales and Victoria, having offices in both colonies, is *prima facie* evidence of incorporation in New South Wales. — *Picturesque Altas Co. v. Searle*, 18 V. L. R. 633; 14 A. L. T. 155.

Conclusiveness of certificate of incorporation. 25. 1. A certificate of incorporation given by the Registrar-General in respect of any company shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Act. 2. The Registrar-General may if he thinks fit require a statutory declaration to be made by a barrister and solicitor of the Court engaged in the formation of the company or by a person named in the articles as a director or secretary of the company to be filed stating that all or any of the said requirements have been complied with. — E. § 17.

Copies of memorandum and articles to be given to members. 26. 1. Every company shall send to every member at his request and on payment of one shilling or such less sum as the company may prescribe a copy of the memorandum and of the articles (if any). 2. If a company makes default in complying with the requirements of this section it shall be liable for each offence to a fine not exceeding one pound. — E. § 18.

Associations not for profit.

Power to dispense with "Limited" in name of charitable and other companies. 27. 1. Where it is proved to the satisfaction of the Attorney-General that an association about to be formed as a limited company is to be formed for the purposes of recreation or amusement or for promoting commerce, art, science, religion, charity, or any other useful object and intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members the Attorney-General may by licence direct that the association be registered as a company with limited liability without the addition of the word "Limited" to its name, and the association may be registered accordingly. 2. A licence by the Attorney-General under this section may be granted on such conditions and subject to such regulations as the Attorney-General thinks fit, and those conditions and regulations shall be binding on the association, and shall if the Attorney-General so direct be inserted in the memorandum and articles or in one of those documents. 3. For every such licence there shall be paid a fee of five guineas or such fee as may be prescribed. 4. The association shall on registration enjoy all the privileges of limited companies and be subject to all their obligations except those of using the word "Limited" as any part of its name, and of publishing its name and of filing lists of members and directors and managers with the Registrar-General; 5. A licence under this section may at any time be revoked by the Attorney-General and upon revocation the Registrar-General shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section: Provided that before a licence is so revoked the Attorney-General shall give to the association notice in writing of his intention and shall afford the association an opportunity of being heard in opposition to the revocation. 6. Any association or institution registered under this section may authorized by its memorandum or articles of association or if not so authorized may with the sanction of a special resolution establish and maintain billiard-tables, chess draughts, and other lawful games for its members. 7. Section one hundred and fifteen and sections one hundred and seventeen to one hundred and twenty-three inclusive shall not apply to a company licensed under this section. — E. § 20.

Companies limited by guarantee.

Provision as to companies limited by guarantee. 28. 1. In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void. 2. For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles or in any resolution of any company limited by guarantee and registered after the commencement of this Act purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital notwithstanding that the nominal amount or number of the shares or interests is not specified thereby. — E. § 21.

Part II. Distribution and Reduction of Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.

Distribution of share capital.

Nature of shares. 29. 1. The shares or other interest of any member in a company shall be personal estate, transferable in manner provided by the articles of the company, and shall not be of the nature of real estate. 2. Each share in a company having a share capital shall be distinguished by its appropriate number. — E. § 22. Shares pledged as collateral may be redeemed like other mortgaged property. — *Niemann v. Weller*, 3 W. W. & a' B. (E.) 125. Preferred, deferred, and debenture stock, and shares in a company

do not pass under a bequest of moneys and securities. — In the Will of Williamson, 26 A. L. T. 91; 10 A. L. R. 197.

Certificate of shares or stock. 30. A certificate under the common seal of the company specifying any shares or stock held by any member shall be *prima facie* evidence of the title of the member to the shares or stock. — E. § 23.

Definition of member. 31. 1. The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members. 2. Every other person who agrees to become a member of a company and whose name is entered in its register of members shall be a member of the company. — E. § 24.

Register of members. 32. Every company shall keep in one or more books a register of its members and enter therein the following particulars: i) The names and addresses and the occupations if any of the members, and in the case of a company having a share capital, a statement of the shares held by each member distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares for each member; ii) The date at which each person was entered in the register as a member; iii) The date at which any person ceased to be a member. 2. If a company fails to comply with this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty. — E. § 25. A person whose name was entered on the register for the purpose of subsequent transfer by him to others was held to be a member even though, with the knowledge of the company, his name was placed on the register for the mere purpose of fulfilling a formality in the transfer. — In re Mercantile Bank, 20 V. L. R. 489; 16 A. L. T. 89, 105.

Annual list of members and summary. 33. 1. Every company having a share capital shall once at least in every year make a list of all persons who, on the day of the first or only ordinary general meeting in the year are members of the company and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company. 2. The list must state the names, addresses, and occupations of all the past and present members therein mentioned and the number of shares held by each of the existing members at the date of the return specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars: a) The amount of the share capital of the company and the number of the shares into which it is divided; b) The number of shares taken from the commencement of the company up to the date of the return; c) The amount called up on each share; d) The total amount of calls received inclusive of application and allotment moneys; e) The total amount of calls unpaid; f) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures or allowed by way of discount in respect of any debentures since the date of the last return; g) The total number of shares forfeited; h) The total amount of shares or stock for which share warrants are outstanding at the date of the return; i) The total amount of share warrants issued and surrendered respectively since the date of the last return; k) The number of shares or amount of stock comprised in each share warrant; l) The names and addresses of the persons who at the date of the return are the directors of the company or occupy the position of directors by whatever name called; and m) The total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the Registrar-General under this Act, or which would have been required so to be registered if created after the twenty-fourth day of December, One thousand eight hundred and ninety-six. 3. The above list and summary must be contained in a separate book and must be completed within fourteen days after the day of the first or only ordinary general meeting in the year and the company must forthwith file with the Registrar-General a copy signed by the manager or by the secretary of the company. 4. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty.

5. Section ten of the *Banks and Currency Act, 1890*, shall not apply to the managing director, manager, chief cashier, or clerk of any company which is required to make the list and summary provided for by this section. — E. § 26. A non-compliance with this section extending over several days does not constitute a separate offence for each day so as to be incapable of being comprised in one summons and one conviction. — *Ex parte Colonial Mutual Life Assurance Co.*, 4 V. L. R. (L.) 287.

Limitation of liability of trustee, etc., registered as owners of shares. Trustee may become registered holder of certain shares. Trusts not to be entered on register. 34. 1. Any trustee, executor, or administrator of the estate of any deceased person who was registered as the holder of a share in any company may become registered as the holder of such share as such trustee, executor, or administrator, and such trustee, executor, or administrator shall in respect of such share be subject to such and the same liabilities and no more as he would have been subjected to if such share had remained registered in the name of such deceased person. 2. Any trustee, executor, or administrator of the estate of any deceased person who was equitably entitled to a share in any company may with the consent of the company and of the registered holder of such share become registered as the holder of such share as such trustee, executor, or administrator; and such trustee, executor, or administrator shall in respect of such share be subject to such and the same liabilities and no more as he would have been subjected to if such share had been registered in the name of such deceased person. 3. Save as hereinbefore mentioned no notice of any trust expressed, implied, or constructive shall be entered on the register or be receivable by the Registrar-General; 4. This section shall apply to all companies incorporated by or under any Act of the Parliament of Victoria. — E. § 27. The *cestui que trust* can not be made liable for falls. — *Melbourne, etc., Syndicate v. Brougham*, 12 V. L. R. 902. But equitable rights in shares may be created, although no transfer is made. — *Dean v. Gillespie*, 8 A. L. T. 140, overruling *Fattorini v. Hill*, 8 A. L. T. 87. But a company registering shares as belonging to a certain person as representative of the estate of a deceased person can not subject such shares to a lien to secure an individual indebtedness of such person to the company. — *McLaughlin v. Bank of Victoria*, 20 V. L. R. 433; 15 A. L. T. 203; 16 A. L. T. 54. As to trustee's right to indemnity, see *In re Mercantile Bank of Australia*, 21 V. L. R. 476; 17 A. L. T. 99; 1 A. L. R. 78.

Registration of transfer at request of transferror. Holder of certificates may be required to bring in certificates to company. Person refusing to bring in certificates may be brought before Court or Judge. List of certificates called in for cancellation to be exhibited. 35. 1. On the application of the transferror of any share or interest in a company the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee. 2. a) On being requested in writing so to do by the transferror of a share in a company the company, shall by writing require the person having the possession, custody, or control of the certificate for any such share and the transfer thereof or either of them to bring the same into the office of the company within a period named in such requisition not less than seven days from the date thereof to have the share certificate cancelled or rectified and the transfer thereof registered or otherwise dealt with as the case may require; b) If any person refuses or neglects to comply with any such requisition as aforesaid, the said transferror may apply to a Judge to issue a summons for such person to appear before the Court and show cause why the documents mentioned in such requisition should not be delivered up or produced for the purpose mentioned in such requisition; and upon appearance before the Court of any person so summoned it shall be lawful for the Court to examine such person upon oath and to receive other evidence, or if he do not appear after being duly served with such summons then to receive evidence in his absence and whether such person do or do not appear (in case the same shall seem proper) to order such person to deliver up such documents to the company upon such terms or conditions as to such Court, shall seem fit, and the cost of the summons and proceedings thereon shall be in the discretion of the Court; c) Lists of share certificates called in as aforesaid and not brought in shall be exhibited in the company's office and shall be advertised in the *Government Gazette* and in such newspapers and at such time or times as the company shall think fit. — E. § 28.

Transfer by personal representative. 36. A transfer of the share or other interest of a deceased member of a company made by his personal representative shall although the personal representative is not himself a member be as valid as if he had been a member at the time of the execution of the instrument of transfer. — E. § 29.

Inspection of register of members. 37. 1. The register of members commencing from the date of the registration of the company shall be kept at the registered office of the company, and except when closed under the provision of this Act shall during business hours (subject to such reasonable restrictions as the company in general meeting may impose so that not less than two hours in each day be allowed for inspection) be open to the inspection of any a member gratis, and to the inspection of any other person on payment of one shilling or such less sum as the company may prescribe for each inspection. 2. Any member or other person may require a copy of the register or of any part thereof or of the list and summary required by this Act or any part thereof on payment of sixpence or such less sum as the company may prescribe for every hundred words of fractional part thereof required to be copied. 3. If any inspection or copy required under this section is refused the company shall be liable for each refusal to a fine not exceeding two pounds and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director and manager of the company who knowingly authorizes or permits the refusal shall be liable to the like penalty, and any Judge of the Court may by order compel an immediate inspection of the register. — E. § 30.

Power to close register. 38. A company may on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate close the register of members for any time or times not exceeding in the whole thirty days in each year. — E. § 31.

Power of Court to rectify register. 39. 1. If: a) The name of any person is without sufficient cause entered in or omitted from the register of members of a company; or b) Default is made or unnecessary delay takes places in entering on the register the fact of any person having ceased to be a member, the person aggrieved or any member of the company or the company may apply to the Court for rectification of the register. 2. The application may be made by motion in the Court or by application to a Judge of the Court sitting in chambers or in such other manner as the Court may direct, and the Court may either refuse the application or may order rectification of the register, and payment by the company of any damages sustained by any party aggrieved. 3. On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register. 4. In the case of a company required by this Act to file a list of its members with the Registrar-General the Court when making an order for rectification of the register shall by its order direct notice of the rectification to be filed with the Registrar-General. — E. § 32. A fraud which was not an inducing cause for the taking of shares is not a ground for ordering removal of name. — *Creswick Grand Trunk Co. v. Rowell*, 2 A. J. R. 35. This section includes as an alleged member a person demanding a transfer of shares. But he should either serve his transferor with notice of the application, or give an adequate excuse for not doing so. — *In re Gippsland S. N. Co.*, 1 V. L. R. (E.) 141. Persons who withdrew their application for shares before it was acted on, and never received notice of allotment or registry, need not take any steps to have their names removed from the register. — *In re Provincial and Suburban Bank*, 7 V. L. R. (E.) 63; 3 A. L. T. 11. As to rights against a promoter fraudulently inducing the purchase of shares, see *Curwen v. Yan Yean Land Co.*, 17 V. L. R. 745; 13 A. L. T. 147. The right to rectification may be lost by laches, especially if third parties have altered their position on the faith of the plaintiff's name appearing on the register. — *Whittlesea Land Co. v. Gutheil*, 18 V. L. R. 557; 14 A. L. T. 48; *Osborne Park, etc., Co. v. Pegg*, 18 V. L. R. 515; *In re Heights of Maribyrnong Estate Co.*, 22 V. L. R. 432; 18 A. L. T. 215; 3 A. L. R. 65. Where under the articles of association the directors have power to decline to register a transfer of shares where the transferor is indebted to the company, no order will be made where it appears that the directors have never been asked to exercise the discretion given them under the articles. — *Ex parte Perchard*, 12 A. L. T. 60. And after the company has gone into liquidation the Court will not exercise the discretion thus vested in the directors. — *In re Chatsworth Estate Co.*, 18 V. L. R. 442; 14 A. L. T. 26. The measure of damages for a wrongful refusal to register a transfer of shares is the value of the shares at the time of the refusal. — *McLaughlin v. Bank of Victoria*, 20 V. L. R. 433; 15 A. L. T. 203; 16 A. L. T. 54. For cases where the Court, having regard to the justice of the case, refused to order a rectification of the register, see *In re Irrigable Estates Co.*, 20 V. L. R. 492; 16 A. L. T. 116; *In re McCracken's City Brewery Co.*, 24 V. L. R. 803; 21 A. L. T. 3; 5 A. L. T. 126. Where a person whose name appears on the register in fact held the shares as trustee, and the trust has determined, he is entitled to have his name removed. — *In re Chatsworth Estate Co.*, 18 V. L. R. 400; 14 A. L. T. 30; *In re Commercial Bank*, 18 A. L. T. 241; 3 A. L.

R. 59. Even where the articles of association empower the directors to refuse to register a transfer of shares, the discretion though absolute in its terms is in the nature of a trust, and must not be exercised capriciously or unjustly. — In re Shaw & Co., 21 V. L. R. 599; 17 A. L. T. 228; 2 A. L. R. 22; In re Australian, etc., Deposit Co., (1907), V. L. R. 660. See further as to discretion of directors In re McCracken's City Brewery Co., 24 V. L. R. 803; 21 A. L. T. 3; 5 A. L. R. 126.

Register to be evidence. 40. The register of members shall be *prima facie* evidence of any matters by this Act decided or authorized to be inserted therein. — E. § 33.

Power for company to keep branch register. 41. 1. A company may if so authorized by its articles cause to be kept in any country, state, or colony a branch register of members (in this Act called a branch register). 2. The company shall file with the Registrar-General notice of the situation of the office where any branch register is kept and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued. — E. § 34.

Regulations as to branch register. 42. 1. A branch register shall be deemed to be part of the company's register of members (in this and the next following section called the principal register). 2. It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the branch register is kept. 3. The company shall transmit to its registered office a copy of every entry in its branch register as soon as may be after the entry is made, and shall cause to be kept at its registered office duly entered up from time to time a duplicate of its branch register, and the duplicate shall for all the purposes of this Act be deemed to be part of the principal register. 4. Subject to the provisions of this section with respect to the duplicate register the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall during the continuance of that registration be registered in any other register. 5. The company may discontinue to keep any branch register and thereupon all entries in that register shall be transferred to some other branch register kept by the company in the same country, state, or colony or to the principal register; 6. Subject to the provisions of this Act any company may by its articles make such provisions as it may think fit respecting the keeping of branch registers. — E. § 35.

"Company" includes companies incorporated under any Victorian Act. 43. In the two immediately preceding sections of this Act the word "company" shall apply not only to companies under this Act or Part I. of the *Companies Act, 1890*, but also to all companies (not being mining companies registered under Part II. of the *Companies Act, 1890*) incorporated by or under any Act of the Parliament of Victoria.

Issue and effect of share warrants to bearer. 44. 1. A company limited by shares if so authorized by its articles may with respect to any fully paid-up shares or to stock issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide by coupons or otherwise for the payment of the future dividends on the shares or stock included in the warrant in this Act termed a share warrant. 2. A share warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant. 3. The bearer of a share warrant shall subject to the articles of the company be entitled on surrendering it for cancellation to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled. 4. The bearer of a share warrant may if the articles of the company so provide be deemed to be a member of the company within the meaning of this Act either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company in cases where such a qualification is required by the articles. 5. On the issue of a share warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars namely: i) The fact of the issue of the warrant; ii) A statement of the shares or stock included in the warrant, dis-

tinguishing each share by its number; and iii) The date of the issue of the warrant; 6. Until the warrant is surrendered the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members, and on the surrender the date of the surrender must be entered as if it were the date at which a person ceased to be a member. — E. § 37.

Forgery, personation, unlawfully engraving plates, etc., 45. 1. If any person: i) With intent to defraud forges or alters or offers, utters, disposes of, or puts off knowing the same to be forged or altered any share warrant or coupon or any document purporting to be a share warrant or coupon issued in pursuance of this Act; or by means of any such forged or altered share warrant, coupon, or document purporting as aforesaid demands or endeavours to obtain or receive any share or interest in any company under this Act or to receive any dividend or money payable in respect thereof knowing the warrant, coupon, or document to be forged or altered; or ii) Falsely and deceitfully personates any owner of any share or interest in any company or of any share warrant or coupon issued in pursuance of this Act and thereby obtains or endeavours to obtain any such share or interest or share warrant or coupon or receives or endeavours to receive any money due to any such owner as if the offender were the true and lawful owner, he shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fifteen years. 2. If any person without lawful authority or excuse, proof whereof shall lie on him, engraves or makes on any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company in pursuance of this Act, or to be a blank share warrant or coupon so issued or made, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing of any such share warrant or coupon or of any such blank share warrant or coupon or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, he shall be guilty of felony and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years. — E. § 38.

Power of company to arrange for different amounts being paid on shares. 46. A company if so authorized by its articles may do any one or more of the following things, namely: i) Make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares; ii) Accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up; iii) Pay dividend in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others. — E. § 39.

Power to return accumulated profits in reduction of paid-up share capital. 47. 1. When a company has accumulated a sum of undivided profits which with the sanction of the shareholders may be distributed among the shareholders in the form of a dividend or bonus it may by special resolution return the same or any part thereof to the shareholders in reduction of the paid-up capital of the company the unpaid capital being thereby increased by a similar amount. 2. The resolution shall not take effect until a memorandum showing the particulars required by this Act in the case of a reduction of share capital has been filed with and registered by the Registrar-General, but the other provisions of this Act with respect to reduction of share capital shall not apply to a reduction of paid-up share capital under this section. 3. On a reduction of paid-up capital in pursuance of this section any shareholder or any one or more of several joint shareholders may within one month after the passing of the resolution for the reduction require the company to retain and the company shall retain accordingly the whole of the money actually paid on the shares held by him either alone or jointly with any other person which in consequence of the reduction would otherwise be returned to him or them, and thereupon those shares shall as regards the payment of dividend be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in such securities authorized for investment by trustees as the company may determine, and on the money so invested or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained the company shall pay the interest received

from time to time on the securities. 4. The amount retained and invested shall be held to represent the future calls which may be made to replace the share capital so reduced on those shares whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made produces more or less than the amount of the call. 5. On a reduction of paid-up share capital in pursuance of this section the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares shall extend to the amount of the unpaid share capital as augmented by the reduction. 6. After any reduction of share capital under this section the company shall specify in the annual list of members required by this Act the amounts retained at the request of any of the shareholders in pursuance of this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section. — E. § 40.

Power of company limited by shares to alter its share capital. 48. 1. A company limited by shares if so authorized by its articles may alter the conditions of its memorandum as follows (that is to say) it may: a) Increase its share capital by the creation of new shares of such amount as it thinks expedient; b) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares; c) Convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination; d) Subdivide its shares or any of them into shares of smaller amount than is fixed by the memorandum so, however, that in the subdivision the proportion between the amount paid and the amount if any unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; e) Cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled. 2. The powers conferred by this section with respect to subdivision of shares must be exercised by special resolution. 3. Where any alteration has been made under this section in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration. If a company makes default in complying with this provision it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty. 4. A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act. — E. § 41.

Notice to Registrar-General of consolidation of share capital; conversion of shares into stock. 49. Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted any of its shares into stock or reconverted stock into shares it shall file notice with the Registrar-General of the consolidation, division, conversion, or reversion specifying the shares consolidated, divided, or converted, or the stock reconverted. — E. § 42.

Effect of conversion of shares into stock. 50. Where a company having a share capital has converted any of its shares into stock and given notice of the conversion to the Registrar-General all the provisions of this Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company and the list of members to be filed with the Registrar-General shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act. — E. § 43.

Notice of increase of share capital or of members. 51. 1. Where a company having a share capital whether its shares have or have not been converted into stock has increased its share capital beyond the registered capital and where a company not having a share capital has increased the number of its members beyond the registered number it shall file with the Registrar-General in the case of an increase of share capital within fifteen days after the passing or in the case of a special resolution the confirmation of the resolution authorizing the increase and in the case of an increase of members within fifteen days after the increase was resolved on or took place notice of the increase of capital or members, and the Registrar-General shall record the increase. 2. If a company makes default in complying with the requirement

of this section it shall be liable to a fine not exceeding five pounds for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty. — E. § 44.

Re-organization of share capital. 52. 1. A company limited by shares may by special resolution confirmed by an order of the Court modify the conditions contained in its memorandum so as to re-organize its share capital whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes: Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolution of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class; 2. Where an order is made under this section an office copy thereof shall be filed with the Registrar-General within seven days after the making of the order or within such further time as the Court may allow, and the resolution shall not take effect until such a copy has been so filed. — E. § 45.

Reduction of share capital.

Special resolution for reduction of share capital. 53. 1. Subject to confirmation by the Court a company limited by shares if so authorized by its articles may by special resolution reduce its share capital in any way and in particular (without prejudice to the generality of the foregoing power) may: a) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or b) Either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or c) Either with or without extinguishing or reducing liability on any of its shares pay off any paid-up share capital which is in excess of the wants of the company, and may if and so far as is necessary alter its memorandum by reducing the amount of its share capital and of its shares accordingly. 2. A special resolution under this section is in this Act called a resolution for reducing share capital. — E. § 46.

Application to Court for confirming order. 54. Where a company has passed and confirmed a resolution for reducing share capital it may apply by petition to the Court for an order confirming the reduction. — E. § 47.

Addition to name of company of "and reduced". 55. On and from the confirmation by a company of a resolution for reducing share capital or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction the company shall add to its name until such date as the Court may fix the words "and reduced" as the last words in its name, and those words shall until that date be deemed to be part of the name of the company: Provided that where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital the Court may, if it thinks expedient, dispense altogether with the addition of the words "and reduced". — E. § 48.

Objections by creditors and settlement of list of objecting creditors. 56. 1. Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which if that date were the commencement of the winding-up of the company would be admissible in proof against the company shall be entitled to object to the reduction. 2. The Court shall settle a list of creditors so entitled to object and for that purpose shall ascertain as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction. 3. Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction the Court may if it thinks fit dispense with the consent of that creditor on the company securing payment of

his debt or claim by appropriating as the Court may direct the following amount (that is to say): i) If the company admits the full amount of his debt or claim or though not admitting it is willing to provide for it then the full amount of the debt or claim; ii) If the company does not admit or is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court. — E. § 49.

Order confirming reduction. 57. The Court if satisfied with respect to every creditor of the company who under this Act is entitled to object to the reduction that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined or has been secured may make an order confirming the reduction on such terms and conditions as it thinks fit. — E. § 50. The list of creditors must be settled at the time that application for confirmation is made to the Court. — *In re Ballarat Land, etc., Co.*, 3 A. L. R. 216. See also *In re Squatting Investment Co.*, 5 A. L. R. (C. N.) 89, 6 A. L. R. (C. N.)

Registration of order and minute of reduction. 58. 1. The Registrar-General on production to him of an order of the Court confirming the reduction of the share capital of a company and the filing with him of a copy of the order and of a minute (approved by the Court) showing with respect to the share capital of the company as altered by the order the amount of the share capital the number of shares into which it is to be divided and the amount of each share and the amount (if any) at the date of the registration deemed to be paid up on each share shall register the order and minute. 2. On the registration and not before the resolution for reducing share capital as confirmed by the order so registered shall take effect. 3. Notice of the registration shall be published in such manner as the Court may direct. 4. The Registrar-General shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with and that the share capital of the company is such as is stated in the minute. — E. § 51.

Minute to form part of memorandum. 59. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of the company and shall be valid and alterable as if it had been originally contained therein, and must be embodied in every copy of the memorandum issued after its registration. 2. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty. — E. § 52.

Liability of members in respect of reduced shares. 60. A member of the company past or present shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid or (as the case may be) the reduced amount if any which is to be deemed to have been paid on the share and the amount of the share as fixed by the minute: Provided that if any creditor entitled in respect of any debt or claim to object to the reduction of share capital is by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim not entered on the list of creditors and after the reduction the company is unable within the meaning of the provisions of this Act with respect to winding up by the Court to pay the amount of his debt or claim then: i) Every person who was a member of the company at the date of the registration of the order for reduction and minute shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before that registration; and ii) If the company is wound up the Court on the application of any such creditor and proof of his ignorance as aforesaid may if it thinks fit settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding-up. Nothing in this section shall affect the rights of the contributories among themselves. — E. § 53.

Penalty on concealment of name of creditor. 61. If any director, manager, or officer of the company wilfully conceals the name of any creditor entitled to object to the reduction or wilfully misrepresents the nature or amount of the debt or claim of any creditor or if any director or manager of the company aids or abets in or is

privity to any such concealment or misrepresentation as aforesaid every such director, manager, or officer shall be guilty of a misdemeanour. — E. § 54.

Publication of reasons for reduction. 62. In any case of reduction of share capital the Court may require the company to publish as the Court directs the reasons for reduction or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and if the Court thinks fit the causes which led to the reduction. — E. § 55.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital. 63. A company limited by guarantee and registered after the commencement of this Act may if it has a share capital and is so authorized by its articles increase or reduce its share capital in the same manner and subject to the same conditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act. — E. § 56.

Registration of unlimited company as limited.

Registration of unlimited company as limited. 64. 1. Subject to the provisions of this section any company registered as unlimited may register under this Act as limited, or any company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of the company before the registration, and those debts, liabilities, obligations and contracts may be enforced in manner provided by Part VII. of this Act in the case of a company registered in pursuance of that Part. 2. On registration in pursuance of this section the Registrar-General shall close the former registration of the company and may dispense with the filing with him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company, but save as aforesaid the registration shall take place in the same manner and shall have effect as if it were the first registration of the company under this Act and as if the provisions of the Act under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company. — E. § 57.

Power of unlimited company to provide for reserved share capital on re-registration. 65. An unlimited company having a share capital may by its resolution for registration as a limited company in pursuance of this Act do either or both of the following things, namely: a) Increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital shall be capable of being called up except in the event and for the purposes of the company being wound up; b) Provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up. — E. § 58.

Reserve liability of limited company.

Reserve liability of limited company. 66. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid. — E. § 59.

Unlimited liability of directors.

Limited company may have directors with unlimited liability. 67. 1. In a limited company the liability of the directors or managers or of the managing director may if so provided by the memorandum be unlimited. 2. In a limited company in which the liability of a director or manager is unlimited the directors or managers of the company (if any) and the member who proposes a person for election or appointment to the office of director or manager shall add to that proposal a statement that the liability of the person holding that office will be unlimited, and the promoters, directors, managers, and secretary (if any) of the company or one of them shall before the person accepts the office or acts therein give him notice in writing that his liability will be unlimited. 3. If any director, manager, or proposer makes default in adding such a statement or if any promoter, director, manager, or secretary makes default in giving such a notice he shall be liable to a fine not exceeding one hundred pounds

and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default. — E. § 60.

Special resolution of limited company making liability of directors unlimited. 68. 1. A limited company if so authorized by its articles may by special resolution alter its memorandum so as to render unlimited the liability of its directors or managers or of any managing director; 2. Upon the confirmation of any such special resolution the provisions thereof shall be as valid as if they had been originally contained in the memorandum; and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution. 3. If a company makes default in complying with the requirements of this section it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made, and every director or manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty. — E. § 61.

Part III. Management and Administration.

Office and name.

Registered office of company. 69. 1. Every company shall have a registered office to which all communications and notices may be addressed. 2. Notice of the situation of the registered office and of any change therein shall be filed with the Registrar-General, who shall record the same. 3. If a company carries on business without complying with the requirements of this section it shall be liable to a fine not exceeding five pounds for every day during which it so carries on business. — E. § 62.

Publication of name by a limited company. 70. 1. Every limited company: a) Shall paint or affix and keep painted or affixed its name on the outside of every office or place in which its business is carried on in a conspicuous position in letters easily legible; b) Shall have its name engraven in legible characters on its seal; c) Shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company and in all bills of parcels, invoices, receipts, and letters of credit of the company. 2. If a limited company does not paint or affix and keep painted or affixed its name in manner directed by this Act it shall be liable to a fine not exceeding five pounds for not so painting or affixing its name and for every day during which its name is not kept painted or affixed, and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty. 3. If any director, manager, or officer of a limited company or any person on its behalf uses or authorizes the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement, or other official publication of the company, or signs or authorizes to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt, or letter of credit of the company wherein its name is not mentioned in manner aforesaid he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company. — E. § 63.

Meetings and proceedings.

Annual general meeting. 71. 1. A general meeting of every company shall be held once at the least in every calendar year and not more than fifteen months after the holding of the last preceding general meeting, and if not so held the company and every director, manager, secretary, and other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds. 2. When default has been made in holding a meeting of the company in accordance with the provisions of this section the Court may on the application of any member of the company call or direct the calling of a general meeting of the company. — E. § 64.

First statutory meeting of company. 72. 1. Every company limited by shares and registered after the commencement of this Act shall within a period of not less

than one month nor more than three months from the date at which the company is entitled to commence business hold a general meeting of the members of the company which shall be called the statutory meeting. 2. The directors shall at least seven days before the day on which the meeting is held forward a report (in this Act called "the statutory report") to every member of the company and to every other person entitled under this Act to receive it. 3. The statutory report shall be certified by not less than two directors of the company or where there are less than two directors by the sole director and manager, and shall state: a) The total number of shares allotted distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted; b) The total amount of cash received by the company in respect of all the shares allotted distinguished as aforesaid; c) An abstract of the receipts of the company on account of its capital whether from shares or debentures and of the payments made thereout up to a date within seven days of the date of the report exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources the payments made thereout and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company; d) The names, addresses, and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company; and e) The particulars of any contract the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification. 4. The statutory report shall so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company on capital account be certified as correct by the auditors, if any, of the company. 5. The directors shall cause a copy of the statutory report certified as by this section required to be filed with the Registrar-General forthwith after the sending thereof to the members of the company. 6. The directors shall cause a list showing the names, descriptions, and addresses of the members of the company and the number of shares held by them respectively to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the meeting. 7. The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed. 8. The meeting may adjourn from time to time and at any adjourned meeting any resolution of which notice has been given in accordance with the articles either before or subsequently to the former meeting may be passed and the adjourned meeting shall have the same powers as an original meeting. 9. If a petition is presented to the Court in manner provided by Part IV. of this Act for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting the Court may instead of directing that the company be wound up give directions for the statutory report to be filed or a meeting to be held or make such other order as may be just. 10. The meeting may by extraordinary resolution of which no notice shall be required appoint a committee or committees of inquiry and may adjourn from time to time, and at any such adjourned meetings an extraordinary resolution may be passed that the company be wound up provided that no such extraordinary resolution shall be proposed unless at least seven days' notice of the intention to move the same shall have been given by the chairman of the meeting in writing to every member of the company. 11. The provisions of this section as to the forwarding and filing of the statutory report shall not apply in the case of a proprietary company. — E. § 65.

Convening of extraordinary general meeting on requisition. 73. 1. Notwithstanding anything in the articles of a company the directors of a company shall on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid forthwith proceed to convene an extraordinary general meeting of the company. 2. The requisition must state the objects of the meeting and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form each signed by one or more requisitionists. 3. If the directors do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited the requisitionists or a majority of them in value

may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of the deposit. 4. If at any such meeting a resolution requiring confirmation at another meeting is passed the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution and if thought fit of confirming it as a special resolution, and if the directors do not convene the meeting within seven days from the date of the passing of the first resolution the requisitionists or a majority of them in value may themselves convene the meeting. 5. Any meeting convened under this section by the requisitionists shall be convened in the same manner as nearly as possible as that in which meetings are to be convened by directors. — E. § 66.

Provisions as to meetings and votes. 74. In default of and subject to any regulations in the articles: i) A meeting of a company may be called by seven days' notice in writing served on every member in manner in which notices are required to be served by Table A in the first Schedule to this Act; ii) Five members may call a meeting; iii) Any person elected by the members present at a meeting may be chairman thereof; iv.) Every member shall have one vote. — E. § 67. Where the rules of a company provide that no shareholder indebted to the company in respect of calls shall be allowed to vote, the vote of such member is good, unless objection is made at the time it is tendered. — *Aberfeldie G. M. Co. v. Walters*, 2 V. L. R. (E.) 116. Legal notice of the meeting is sufficient; actual knowledge is not necessary. — *Cushing v. Lady Barkly G. M. Co.*, 9 V. L. R. (E.) 108, 124; 5 A. L. T. 98. Where the articles of association require seven days' notice of every general meeting to be inserted twice in one newspaper, both insertions must take place at least seven days before the meeting. — *Dalrymple v. Prince of Wales, etc., Co.*, 16 A. L. T. 168. As to interpretation of certain provisions in the articles of association relating to method of voting, see *Montgomerie's Brewery Co. v. Spencer*, 20 A. L. T. 260; 5 A. L. R. 112. *Semble*, where vote is taken by show of hands proxies can not be counted. — *James v. Evening Standard Newspaper Co.*, 17 A. L. T. 5. Where the object of the meeting is to decide "as to the winding-up of the company" it is not competent to adopt a resolution to empower the directors to sell the assets of the company. — *Hick v. Havilah G. M. Co.*, 4 W. W. & a' B. (E.) 87.

Representation of companies at meetings of other companies of which they are members. 75. A company which is a member of another company may by resolution of the directors authorize any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorized shall be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company. — E. § 68.

Definitions of extraordinary and special resolution. 76. A resolution shall be an extraordinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given. 2. A resolution shall be a special resolution when it has been: a) Passed in manner required for the passing of an extraordinary resolution; and b) Confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting of which notice has been duly given and held after an interval of not less than fourteen days nor more than one month from the date of the first meeting. 3. At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a declaration of the chairman that the resolution is carried shall unless a poll is demanded be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. 4. At any meeting at which an extraordinary resolution is submitted to be passed or a special resolution is submitted to be passed or confirmed a poll may be demanded if demanded by three persons for the time being entitled according to the articles to vote unless the articles of the company require a demand by such number of such persons not in any case exceeding five as may be specified in the articles. 5. When a poll is demanded in accordance with this section in computing the majority on the poll reference shall be had to the number of votes to which each member is entitled by the articles of the company. 6. For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles. — E. § 69. A special resolution carried in the manner provided by this section is valid notwithstanding that the articles of association provide for a different procedure. — *James v. Evening Standard Newspaper Co.*, 21 V. L. R. 399; 17 A. L. T. 158; 1 A. L. R. 143. The declaration of the chairman is conclusive evidence

of the count of the votes, but not of the regularity of the meeting. — *In re Fraser & Co.*, 22 V. L. R. 385; 18 A. L. T. 122; 2 A. L. R. 257.

Registration and copies of special and extraordinary resolutions. 77. 1. A copy of every special and extraordinary resolution shall within fifteen days from the confirmation of the special resolution or from the passing of the extraordinary resolution, as the case may be, be printed and filed with the Registrar-General who shall record the same. 2. Where articles have been registered a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the confirmation of the resolution. 3. Where articles have not been registered a copy of every special resolution shall be forwarded in print to any member at his request on payment of one shilling or such less sum as the company may direct. 4. If a company makes default in printing or filing a copy of a special or extraordinary resolution with the Registrar-General it shall be liable to a fine not exceeding two pounds for every day during which the default continues. 5. If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member when required by this section a copy of a special resolution it shall be liable to a fine not exceeding one pound for each copy in respect of which default is made. 6. Every director and manager of a company who knowingly and wilfully authorizes or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default. — E. § 70.

Minutes of proceedings of meetings and directors. 78. 1. Every company shall cause minutes of all proceedings of general meetings and (where there are directors or managers) of its directors or managers to be entered in books kept for that purpose. 2. Any such minute if purporting to be signed by the chairman of the meeting at which the proceedings were had or by the chairman of the next succeeding meeting shall be evidence of the proceedings. 3. Until the contrary is proved every general meeting of the company or meeting of directors or managers in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly held and convened and all proceedings had thereat to have been duly had and all appointments of directors, managers, or liquidators shall be deemed to be valid. — E. § 71. Otherwise if the directors act after their term of office, according to statute, as expired. — *Barfold, etc., Co. v. Klingender*, 6 W. W. & a' B. (L.) 231; N. C. 25. Minutes of meeting entered in a scrap-book used for roughly drafting such minutes before entering them in the regular minute-book, signed by the chairman, are evidence under this section. — *Legal and General, etc., Co. v. Gill*, 4 V. L. R. (L.) 204. This section, so far as regards the appointment of directors, means that the burden of proof of the invalidity of the appointment rests upon the person who impeaches it. — *Buzolich Paint Co. v. Cornwell*, 11 V. L. R. 371; 7 A. L. T. 138. As to presumptive validity of acts done at a meeting of which no adequate notice was given, see *Federal Mutual, etc., Insurance Co. v. Donaghy*, 14 V. L. R. 857; 10 A. L. T. 126. Only such things as are said or done by the directors in their official capacity should be incorporated in the minutes. A record that a director was present is part of the "proceedings". — *Reg. v. Staples*, 19 V. L. R. 47; 14 A. L. T. 220. For a case where the appointment of directors was deemed to be validated under this section, see *Essendon Land, etc., Co. v. Kilgour*, 24 V. L. R. 136; 20 A. L. T. 5; 4 A. L. R. 130. The validity given by this section extends to all transactions whether between the company and strangers or between the company and its members. The invalidity of the appointment of the directors, etc., must be proved in legal proceedings. — *In re Fraser & Co.*, 22 V. L. R. 385; 18 A. L. T. 122; 2 A. L. R. 257. See also *Mercantile Bank of Australia v. Dinwoodie*, 28 V. L. R. 491; 24 A. L. T. 103; 8 A. L. R. 250. Section 67 applies also to defects in the meeting as to quorum. — *McLean Bros. & Rigg v. Grice*, 4 C. L. R. 835; reversing *McLean Bros. & Rigg v. Grice*, (1906), V. L. R. 610; 28 A. L. T. 14; 12 A. L. R. 324.

Appointment, qualification, etc., of directors.

Restrictions on appointment or advertisement of director. 79. 1. A person shall not be capable of being appointed director of a company by the articles and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in any statement in lieu of prospectus filed by or on behalf of a company unless before the registration of the articles or the publication of the prospectus or the filing of the statement in lieu of prospectus as the case may be he has by himself or by his agent authorized in writing: i) Signed and filed with the Registrar-General a consent in writing to act as such director; and ii) Either signed the memorandum for a number of shares not less than his qualification (if any) or signed and filed with the Registrar-General a contract in writing to take from the company and pay for his qualification shares (if any). 2. On the applic-

ation for registration of the memorandum and articles of a company the applicant shall file with the Registrar-General a list of the persons who have consented to be directors of the company and if this list contains the name of any person who has not so consented the applicant shall be liable to a fine not exceeding fifty pounds. 3. This section shall not apply to a proprietary company nor to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business. — E. § 72.

Qualification of director. 80. 1. Without prejudice to the restrictions imposed by the last foregoing section it shall be the duty of every director who is by the regulations of the company required to hold a specified share qualification and who is not already qualified to obtain his qualification within two months after his appointment or such shorter time as may be fixed by the regulations of the company. 2. The office of director of a company shall be vacated if the director does not within two months from the date of his appointment or within such shorter time as may be fixed by the regulations of the company obtain his qualification or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification. 3. If after the expiration of the said period or shorter time any unqualified person acts as a director of the company he shall be liable to a fine not exceeding five pounds for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director. 4. Unless otherwise provided by the regulations of a company, the qualification of any director of a company must be held by him solely and not as one of several joint holders. — E. § 73. Where under the articles of association it was provided that no person who was indebted to the company in respect of calls was eligible for election as director, and that a director so indebted at the day of payment must vacate his office, it was held that a person who had given his promissory note in payment of calls was disqualified. — *Umphelby v. Wilkie*, 5 A. J. R. 108. It was once held that the qualification need exist only at the time of election. — *Reeves v. M. Cafferty*, 1 V. R. (L.) 190; 1 A. J. R. 153. But see now subs. (2) of this section.

Validity of acts of directors. 81. The acts of a director or manager shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. — E. § 74.

List of directors to be sent to Registrar-General. 82. 1. Every company shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and file with the Registrar-General a copy thereof and from time to time file with the Registrar — General a notice of any change among its directors or managers. 2. If default is made in compliance with this section the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and wilfully authorizes or permits the default shall be liable to the like penalty. — E. § 75.

Contracts, etc.

Form of contracts. 83. 1. Contracts on behalf of a company may be made as follows (that is to say): i) Any contract which if made between private persons would be by law required to be in writing under seal may be made on behalf of the company in writing under the common seal of the company and may in the same manner be varied or discharged; ii) Any contract which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged; iii) Any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged. 2. All contracts made according to this section shall be effectual in law and shall bind the company and its successors and all other parties thereto their heirs, executors, or administrators as the case may be. — E. § 76. For a case under subsection (II.) see *In re Fraser & Co.*, 19 A. L. T. 97; 3 A. L. R. 185.

Bills of exchange and promissory notes. 84. A bill of exchange or promissory note shall be deemed to have been made, accepted, or indorsed on behalf of a company if made, accepted, or indorsed in the name of, or by, or on behalf, or on account of

the company by any person acting under its authority. — E. § 77. The incorporation of the words "value received on account of the company", nothing further appearing, does not relieve directors who have affixed their individual names from personal liability on a promissory note. — *M'Mullen v. O'Connor*, 5 W. W. & a' B. (L.) 200. Nor the affixing of the company's seal. — *Harriman v. Purches*, 9 V. L. R. (L.) 234; 5 A. L. T. 76. Cp. also *White v. Bank of Victoria*, 8 V. L. R. (M.) 8; 3 A. L. T. 90 (a case of guaranty). But as against a party, not a holder in due course, directors who have signed as individuals, but where the note was taken as binding on the company, may set up this equitable defence. — *Dickins v. Ingram*, 18 V. L. R. 675. As to affixing of stamp, see *Bank of South Australia v. City, etc., Bank*, 18 V. L. R. 16; 13 A. L. T. 175.

Execution of deeds abroad. 85. A company may by writing under its common seal empower any person either generally or in respect of any specified matters as its attorney to execute deeds on its behalf in any place not situate in the State of Victoria; and every deed signed by such attorney on behalf of the company and under his seal shall bind the company and have the same effect as if it were under its common seal. — E. § 78.

Power for company to have official seal for use abroad. 86. 1. A company whose objects require or comprise the transaction of business in foreign countries may if authorized by its articles have for use in any territory, district, or place not situate in the State of Victoria an official seal which shall be a fac-simile of the common seal of the company with the addition on its face of the name of every territory, district, or place where it is to be used. 2. A company having such an official seal may by writing under its common seal authorize any person appointed for the purpose in any territory, district, or place not situate in the State of Victoria to affix the same to any deed or other document to which the company is party in that territory, district, or place. 3. The authority of any such agent shall as between the company and any person dealing with the agent continue during the period, if any, mentioned in the instrument conferring the authority or if no period is there mentioned then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him. 4. The person affixing any such official seal shall by writing under his hand on the deed or other document to which the seal is affixed certify the date and place of affixing the same. 5. A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company. — E. § 79.

Prospectus.

Filing of prospectus. 87. 1. Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated; and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus. 2. A copy of every such prospectus signed by every person who is named therein as a director or proposed director of the company or by his agent authorized in writing shall be filed for registration with the Registrar-General on or before the date of its publication and no such prospectus shall be issued until a copy thereof has been so filed for registration. 3. The Registrar-General shall not register any prospectus unless it is dated and the copy thereof signed in manner required by this section. 4. Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section. 5. If a prospectus is issued without a copy thereof being so filed the company and every person who is knowingly a party to the issue of the prospectus shall be liable to a fine not exceeding five pounds for every day from the date of the issue of the prospectus until a copy thereof is so filed. — E. § 80.

Specific requirements as to particulars of prospectus. 88. Every prospectus issued by or on behalf of a company or by or on behalf of any person who is or has been engaged or interested in the formation of the company must state: a) The contents of the memorandum with the names, descriptions, and addresses of the signatories and the number of shares subscribed for by them respectively; and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and b) The number of shares, if any, fixed by the articles as the qualification of a director and any provision in the articles as to the remuneration of the directors; and c) The names, descriptions, and addresses of the directors or proposed directors; and d) The minimum subscription on which the directors may proceed to allotment and the amount payable on application and allotment on each share; and in the case of a se-

cond or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years and the amount actually allotted and the amount, if any, paid on the shares so allotted; and e) The number and amount of shares and debentures which within the two preceding years have been issued or agreed to be issued as fully or partly paid up otherwise than in cash and in the latter case the extent to which they are so paid up and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and f) The names and addresses of the vendors of any property purchased or acquired by the company or proposed so to be purchased or acquired which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of issue of the prospectus and the amount payable in cash, shares, or debentures to the vendor, and where there is more than one separate vendor or the company is a sub-purchaser the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and g) The amount (if any) paid or payable as purchase money in cash, shares, or debentures for any such property as aforesaid specifying the amount (if any) payable for goodwill; and h) The amount (if any) paid within the two preceding years or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares in or debentures of the company or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and i) The amount or estimated amount of preliminary expenses; and j) The amount paid within the two preceding years or intended to be paid to any promoter and the consideration for any such payment; and k) The dates of and parties to every material contract and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or to any contract entered into more than two years before the date of issue of the prospectus; and l) The names and addresses of the auditors (if any) of the company; and m) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by the company or where the interest of such a director consists in being a partner in a firm the nature and extent of the interest of the firm with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become or to qualify him as a director or otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company; and n) Where the company is a company having shares of more than one class the right of voting at meetings of the company conferred by the several classes of shares respectively. 2. For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract absolute or conditional for the sale or purchase or for any option of purchase of any property to be acquired by the company in any case where: a) The purchase money is not fully paid at the date of issue of the prospectus; or b) The purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or c) The contract depends for its validity or fulfilment on the result of that issue. 3. Where any of the property to be acquired by the company is to be taken on lease this section shall apply as if the expression "vendor" included the lessor and the expression "purchase money" included the consideration for the lease and the expression "sub-purchaser" included a sub-lessee. 4. Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus shall be void. 5. Where any such prospectus as is mentioned in this section is published as a newspaper advertisement it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto and the number of shares subscribed for by them. 6. In the event of non-compliance with any of the requirements of this section a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance if he proves that: a) As regards any matter not disclosed he was not cognisant thereof; or b) The non-compliance arose from an honest mistake of fact on his part: Provided that in the event of non-compliance with the requirements contained in paragraph m

of subsection 1 of this section no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed. 7. This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company whether with or without the right to renounce in favour of other persons but subject as aforesaid this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently. 8. The requirements of this section as to the memorandum and the qualification, remuneration, and interest of directors the names, descriptions, and addresses of directors or proposed directors and the amount or estimated amount of preliminary expenses shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business. 9. Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section. — E. § 82. For cases where statements in prospectus were held to be misleading, see *Benjamin v. Wymond*, 10 V. L. R. (E.) 3; 5 A. L. T. 153; *Allan v. Gotch*, 9 V. L. R. (L.) 371.

Power to issue abridged advertisement. 89. Notwithstanding anything in the last preceding section it shall not be necessary in an advertisement of a prospectus in the public press to insert the particulars required by that section except those with respect to the names, descriptions, and addresses of the directors or proposed directors and the number of shares subscribed for by them respectively and with respect to the minimum subscription on which the directors may proceed to allotment. Provided that the advertisement: a) States that the requirements aforesaid have not been fully complied with; and b) States where copies of the full prospectus and forms of application for shares may be obtained; and c) States that applications for shares will proceed only on one of the forms of application referred to and indorsed upon a printed copy of the prospectus; and d) Does not contain anything to which the said requirements apply and which is not in the prospectus or is inconsistent with the prospectus.

Obligations of companies where no prospectus is issued. 90. 1. A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the Registrar-General a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing in the form and containing the particulars set out in the second Schedule to this Act. 2. This section shall not apply to a proprietary company or to a company which has allotted any shares or debentures before the commencement of this Act. — E. § 82.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus. 91. A company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus except subject to the approval of the statutory meeting. — E. § 83.

Liability for statements in prospectus. 92. 1. Where a prospectus invites persons to subscribe for shares in or debentures of a company every person who is a director of the company at the time of the issue of the prospectus and every person who has authorized the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time and every promoter of the company and every person who has authorized the issue of the prospectus shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith unless it is proved: a) With respect to every untrue statement not purporting to be made on the authority of an expert or of a public official document or statement that he had reasonable ground to believe and did up to the time of the allotment of the shares or debentures as the case may be believe that the statement was true; and b) With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert that it fairly represented the statement or was a correct and fair copy of or extract from the report or valuation: Provided that the director, person named as director, promoter, or person who authorized the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had

no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and c) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document that it was a correct and fair representation of the statement or copy of or extract from the document: or unless it is proved: i) That having consented to become a director of the company he withdrew his consent before the issue of the prospectus and that it was issued without his authority or consent; or ii) That the prospectus was issued without his knowledge or consent and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or iii) That after the issue of the prospectus and before allotment thereunder he on becoming aware of any untrue statement therein withdrew his consent thereto and gave reasonable public notice of the withdrawal and of the reason therefor. 2. Where a company existing on the twenty-fourth day of December, One thousand eight hundred and ninety six, has issued shares or debentures and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus a director shall not be liable in respect of any statement therein unless he has authorized the issue of the prospectus or has adopted or ratified it. 3. Where the prospectus contains the name of a person as a director of the company or as having agreed to become a director thereof and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus and has not authorized or consented to the issue thereof the directors of the company except any without whose knowledge or consent the prospectus was issued and any other person who authorized the issue thereof shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or in defending himself against any action or legal proceedings brought against him in respect thereof. 4. Every person who by reason of his being a director or named as a director or as having agreed to become a director or of his having authorized the issue of the prospectus becomes liable to make any payment under this section may recover contribution as in cases of contract from any other person, who if sued separately would have been liable to make the same payment, unless the person who has become so liable was and that other person was not guilty of fraudulent misrepresentation. 5. For the purposes of this section: The expression "promoter" means a promoter who was a party to the preparation of the prospectus or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company; The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him. — E. § 84. As to liability of promoters for secret profits, see *Benjamin v. Wymond*, 10 V. L. R. (E.) 3; 5 A. L. T. 153. Promoters of a company do not sustain the relation of partners to each other. — *Wilkins v. Davies*, 16 V. L. R. 70; 11 A. L. T. 141. As to liability for fraud, see *Curwen v. Yan Yean Land Co.*, 17 V. L. R. 745; 13 A. L. T. 147. Representations deemed not misleading, see *Langier v. Victorian, etc., Power Co.*, 16 V. L. R. 64; 11 A. L. T. 126.

Allotment.

Restrictions as to allotment. 93. 1. No allotment shall be made of any share capital of a company offered to the public for subscription unless the following conditions have been complied with namely: a) The amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or b) If no amount is so fixed and named then the whole amount of the share capital so offered for subscription, has been subscribed, and the sum payable on application for the amount so fixed and named or for the whole amount offered for subscription has been paid to and received by the company. 2. The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash and is in this Act referred to as the minimum subscription. 3. The amount payable on application on each share shall not be less than five per centum of the nominal amount of the share. 4. If the conditions aforesaid have not been complied with on the expiration of three months after the first issue of the prospectus all money received from applicants for shares shall be forthwith repaid to them without interest, and if any such money is not so repaid within four months after the issue of the prospectus the directors of the company shall be jointly and severally liable to repay that money

with interest at the rate of five per centum per annum from the expiration of the period of four months: Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part. 5. Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void. 6. This section except subsection 3 thereof shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription. 7. In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares no allotment shall be made unless the minimum subscription (that is to say): a) The amount (if any) fixed by the memorandum or articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment; or b) If no amount is so fixed and named then the whole amount of the share capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash, has been subscribed and an amount not less than five per centum of the nominal amount of each share payable in cash has been paid to and received by the company. This subsection shall not apply to a proprietary company or to a company which has allotted any shares or debentures before the commencement of this Act. — E. § 85. A person may be estopped from denying that he has accepted an allotment. — *Legal and General, etc., Co. v. Gill*, 4 V. L. R. (L.) 204.

Effect of irregular allotment. 94. 1. An allotment made by a company to an applicant in contravention of the provisions of the last foregoing section shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up. 2. If any director of a company knowingly contravenes or permits or authorizes the contravention of any of the provisions of the last foregoing section with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover any such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment. — E. § 86.

Restrictions on commencement of business. 95. 1. A company shall not commence any business or exercise any borrowing powers unless: a) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and b) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription, or in case of a company which does not issue a prospectus inviting the public to subscribe for its shares, on the shares payable in cash; and c) There has been filed with the Registrar-General a statutory declaration by the secretary or one of the directors in the prescribed form that the aforesaid conditions have been complied with; and d) In the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the Registrar-General a statement in lieu of prospectus. 2. The Registrar-General shall on the filing of this statutory declaration certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled: Provided that in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares the Registrar-General shall not give such a certificate unless a statement in lieu of prospectus has been filed with him. 3. Any contract made by a company before the date at which it is entitled to commence business shall be provisional only and shall not be binding on the company until that date, and on that date it shall become binding. 4. Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures. 5. If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues. 6. Nothing in this section shall apply to a proprietary company or to a company registered before the twenty-fourth day of December, One thousand eight hundred and ninety-six, or to a company re-

gistered before the commencement of this Act which does not issue a prospectus inviting the public to subscribe for its shares. — E. § 87.

Return as to allotments. 96. 1. Whenever a company limited by shares makes any allotment of its shares the company shall within one month thereafter file with the Registrar-General: a) A return of the allotments stating the number and nominal amount of the shares comprised in the allotment the names, addresses, and descriptions of the allottees and the amount (if any) paid or due and payable on each share; and b) In the case of shares allotted as fully or partly paid up otherwise than in cash, a contract in writing constituting the title of the allottee to the allotment, together with any contract of sale, or for services or other consideration in respect of which that allotment was made, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. 2. Where such a contract as above mentioned is not reduced to writing the company shall within one month after the allotment file with the Registrar-General the prescribed particulars of the contract. 3. If default is made in complying with the requirements of this section every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding fifty pounds for every day during which the default continues: Provided that in case of default in filing with the Registrar-General within one month after the allotment any document required to be filed by this section the company or any person liable for the default may apply to the Court for relief, and the Court if satisfied that the omission to file the document was accidental or due to inadvertence or that it is just and equitable to grant relief may make an order extending the time for the filing of the document for such period as the Court may think proper. — E. § 88.

Commissions and discounts.

Power to pay certain commissions, and prohibition of payment of all other commissions, discounts, etc. 97. 1. It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if the payment of the commission is authorized by the articles and the commission paid or agreed to be paid does not exceed the amount or rate so authorized, and if the amount or rate per centum of the commission paid or agreed to be paid is: a) In the case of shares offered to the public for subscription disclosed in the prospectus; or b) In the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the Registrar-General, and where a circular or notice not being a prospectus inviting subscription for the shares is issued also disclosed in that circular or notice. 2. Save as aforesaid no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance to any person in consideration for his subscribing or agreeing to subscribe whether absolutely or conditionally for any shares of the company or procuring or agreeing to procure subscriptions whether absolute or conditional for any shares in the company whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company or the money be paid out of the nominal purchase money or contract price or otherwise; 3. Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay and a vendor to, promoter of, or other person who receives payment in money or shares from a company shall have and shall be deemed always to have had power to apply any part of the money or shares so received in payment of any commission the payment of which if made directly by the company would have been legal under this section. — E. § 89.

Statement in balance-sheet as to commissions and discounts. 98. Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed or so much thereof as has not been written off shall be stated in every balance-sheet of the company until the whole amount thereof has been written off. — E. § 90.

Payment of interest out of capital.

Power of company to pay interest out of capital in certain cases. 99. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which can not be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building or the provision of plant: Provided that: 1. No such payment shall be made unless the same is authorized by the articles or by special resolution. 2. No such payment whether authorized by the articles or by special resolution shall be made without the previous sanction of the Attorney-General. 3. Before sanctioning any such payment the Attorney-General may at the expense of the company appoint a person to inquire and report to him as to the circumstances of the case, and may before making the appointment require the company to give security for the payment of the costs of the inquiry. 4. The payment shall be made only for such period as may be determined by the Attorney-General, and such period shall in no case extend beyond the close of the half year next after the half year during which the works or buildings have been actually completed or the plant provided. 5. The rate of interest shall in no case exceed four per centum per annum or such lower rate as may for the time being be prescribed by Order in Council. 6. The payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid. 7. The accounts of the company shall show the share capital on which and the rate at which interest has been paid out of capital during the period to which the accounts relate. — E. § 91.

Certificates of shares, etc.

Limitation of time for issue of certificates. 100. 1. Every company shall within two months after the allotment of any of its shares, debentures, or debenture stock, and within two months after the registration of the transfer of any such shares, debentures, or debenture stock, complete and have ready for delivery the certificates of all shares the debentures and the certificates of all debenture stock allotted or transferred unless the conditions of issue of the shares, debentures, or debenture stock otherwise provide. 2. If default is made in complying with the requirements of this section the company and every director, manager, secretary, and other officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five pounds for every day during which the default continues. — E. § 92.

Information as to mortgages, charges, etc.

Registration of mortgages and charges. 101. 1. Every mortgage or charge created by a company after the commencement of this Act and being either: a) A mortgage or charge for the purpose of securing any issue of debentures; or b) A mortgage or charge on uncalled or unpaid share capital of the company; or c) A mortgage or charge created or evidenced by an instrument which if executed by an individual would require registration as a bill of sale; or d) A mortgage or charge on any book debts of the company; or e) A floating charge on the undertaking or property of the company, shall so far as any security on the company's property or undertaking is thereby conferred be void against the liquidator, and any creditor of the company unless the instrument (if any) by which the mortgage or charge is created or evidenced or a copy thereof accompanied by an affidavit verifying the execution of the mortgage, and in the case of a copy also verifying it as a true copy of such mortgage are filed with the Registrar-General for registration in manner required by this Act within thirty days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable: Provided that: i) In the case of a mortgage or charge created out of the State of Victoria thirty days after the date on which the instrument or copy could in due course of post and if despatched with due diligence have been received in the State of Victoria shall be substituted for thirty days after the date of the creation of the mortgage or charge as the time within which the particulars and instrument or copy are to be filed with the Registrar-General; and ii) Where the mortgage or charge is created in the State of Victoria, but comprises property outside the State

of Victoria, the instrument creating or purporting to create the mortgage or charge or a copy thereof accompanied by a verifying affidavit as aforesaid may be filed for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country, State, or Colony in which the property is situate; and iii) Where a negotiable instrument has been given to secure the payment of any book debts of a company the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage or charge on those book debts; and iv) The holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land. 2. The Registrar-General shall keep with respect to each company a register in the prescribed form of all the mortgages and charges created by the company after the commencement of this Act and requiring registration under this section, and shall on payment of the prescribed fee enter in the register with respect to every such mortgage or charge the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge. 3. Where a series of debentures containing or giving by reference to any other instrument any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company it shall be sufficient if there are filed with the Registrar-General within thirty days after the execution of the deed containing the charge, or if there is no such deed after the execution of any debentures of the series, or if it or they is or are executed out of the State of Victoria then within thirty days after the date on which it or they would in due course of post if despatched with due diligence have been received in the State of Victoria the following particulars: a) The total amount secured by the whole series; and b) The dates of the resolutions authorizing the issue of the series and the date of the covering deed if any by which the security is created or defined; and c) A general description of the property charged; and d) The names of the trustees if any for the debenture holders, together with the deed or verified copy thereof containing the charge or if there is no such deed one of the debentures of the series and the Registrar-General shall enter those particulars in the register: Provided that where more than one issue is made of debentures in the series there shall be filed with the Registrar-General for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued. 4. Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe whether absolutely or conditionally for any debentures of the company or procuring or agreeing to procure subscriptions whether absolute or conditional for any such debentures, the particulars required to be filed for registration under this section shall include particulars as to the amount or rate per centum of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued: Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount. 5. The Registrar-General shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with. 6. The company shall cause a copy of every certificate of registration given under this section to be indorsed on every debenture or certificate of debenture stock which is issued by the company and the payment of which is secured by the mortgage or charge so registered: Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be indorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created. 7. It shall be the duty of the company to file with the Registrar-General for registration the instrument (if any) by which the mortgage or charge is created or evidenced or a copy thereof accompanied by an affidavit verifying the execution of the mortgage and in the case of a copy also verifying it as a true copy of such mortgage and the particulars of the issues of debentures of a series requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein. Where the registration is effected on the application of some person other than the company, that

person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar-General on the registration. 8. The instruments or copies of instruments creating any mortgage or charge filed with the Registrar-General and the register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection. 9. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company: Provided that, in the case of a series of uniform debentures a copy of one such debenture shall be sufficient. 10. No mortgage or charge requiring registration under this section shall require to be filed or registered under the provisions of the *Instruments Act, 1890*, or the *Book Debts Act, 1896*, anything contained in such Acts or any Acts amending the same to the contrary notwithstanding. 11. Where a mortgage requiring registration under this Act is created within or on the expiration of thirty days after the creation of a prior unregistered mortgage and comprises all or any part of the property comprised in the prior mortgage and the subsequent mortgage is given as a security for the same debt as is secured by the prior mortgage, or for any part of such debt, then to the extent to which such subsequent mortgage is a security for the same debt or part thereof, and so far as respects the property comprised in the prior mortgage, such subsequent mortgage shall not be operative or have any validity at law or in equity, unless it is proved to the satisfaction of the Court having cognizance of the case that the subsequent mortgage was given in good faith for the purpose of correcting some material error in the prior mortgage and not for the purpose of avoiding or evading this Act. — E. § 93. Mortgages on chattels having their actual situs in Victoria, executed in England by a company there domiciled, must, in order to give to the mortgage a title superior to that of a person who has seized them under a warrant of execution, be registered in conformity with this section. — *Hockey v. Mother of Gold Consolidated Mines*, 29 V. L. R. 196, 25 A. L. T. 32, 9 A. L. R. 163. A bill of sale given by a company need not be registered under Part VI. of the *Instruments Act, 1890*. — *In re Eggleston & Eggleston*, 28 V. L. R. 111, 23 A. L. T. 247, 8 A. L. R. 127.

Registration of enforcement of security. 102. 1. If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within seven days from the date of the order or of the appointment under the powers contained in the instrument file notice of the fact with the Registrar-General, and the Registrar-General shall enter the fact in the register of mortgages and charges. 2. If any person makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues. — E. § 94.

Filing of accounts of receivers and managers. 103. 1. Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument and who has taken possession shall once in every half-year while he remains in possession and also on ceasing to act as receiver or manager file with the Registrar-General an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the Registrar-General notice to that effect, and the Registrar-General shall enter the notice in the register of mortgages and charges. 2. Every receiver or manager who makes default in complying with the provisions of this section shall be liable to a fine not exceeding fifty pounds. — E. § 95.

Rectification of register of mortgages. 104. A Judge of the Court on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required or that the omission or misstatement of any particular with respect to any such mortgage or charge was accidental or due to inadvertence or to some other sufficient cause or is not of a nature to prejudice the position of creditors or shareholders of the company or that on other grounds it is just and equitable to grant relief, may on the application of the company or any person interested and on such terms and conditions as seem to the Judge just and expedient order that the time for registration be extended, or as the case may be, that the omission or misstatement be rectified. — E. § 96.

Entry of satisfaction. 105. The Registrar-General may on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied enter a memorandum of satisfaction on the register

and shall on payment of the prescribed fee furnish the company with a copy thereof. — E. § 97.

Index to register of mortgages and charges. 106. The Registrar-General shall keep an index in the prescribed form and with the prescribed particulars of the mortgages or charges registered with him under this Act. — E. § 98.

Penalties. 107. 1. If any company makes default in filing with the Registrar-General for registration the instrument (if any) by which any mortgage or charge is created or the verified copy thereof or the particulars of the issues of debentures of a series requiring registration with the Registrar-General under the foregoing provisions of this Act, then unless the registration has been effected on the application of some other person the company and every director, manager, secretary, or other person who is knowingly a party to the default shall on conviction be liable to a fine not exceeding fifty pounds for every day during which the default continues. 2. Subject as aforesaid if any company makes default in complying with any of the requirements of this Act as to the registration with the Registrar-General of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company who knowingly and wilfully authorized or permitted the default shall without prejudice to any other liability be liable on summary conviction to a fine not exceeding one hundred pounds. 3. If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock requiring registration with the Registrar-General under the foregoing provisions of this Act without a copy of the certificate of registration being indorsed upon it, he shall without prejudice to any other liability be liable on summary conviction to a fine not exceeding one hundred pounds. — E. § 99.

Company's register of mortgages. 108. 1. Every company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto. 2. If any director, manager, or other officer of the company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section he shall be liable to a fine not exceeding fifty pounds. — E. § 100. Cp. In re Chaffey Bros., 21 V. L. R. 727, 2 A. L. R. 74.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages. 109. 1. The copies of instruments creating any mortgage or charge requiring registration under this Act with the Registrar-General, kept at the registered office of the company, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee not exceeding one shilling for each inspection as the company may prescribe. 2. If inspection of the said copies or register is refused any officer of the company refusing inspection and every director and manager of the company authorizing or knowingly and wilfully permitting the refusal shall be liable to a fine not exceeding five pounds and a further fine not exceeding two pounds for every day during which the refusal continues, and in addition to the above penalty any Judge of the Court sitting in chambers may by order compel an immediate inspection of the copies or register. — E. § 101.

Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed. 110. 1. Every register of holders of debentures of a company shall except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose so that at least two hours in each day are appointed for inspection and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied. 2. A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or where the trust deed has not been printed on payment of sixpence for every one hundred words required to be copied. 3. If inspection

is refused or a copy is refused or not forwarded the company shall be liable to a fine not exceeding five pounds and to a further fine not exceeding two pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorizes or permits the refusal shall incur the like penalty. — E. § 102.

Debentures and floating charges.

Perpetual debentures. 111. A condition contained in any debentures or in any deed for securing any debentures whether issued or executed before or after the passing of this Act shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency however remote or on the expiration of a period however long any rule of equity to the contrary notwithstanding. — E. § 103.

Power to re-issue redeemed debentures in certain cases. 112. 1. Where either before or after the passing of this Act a company has redeemed any debentures previously issued the company, unless the articles or the conditions of issue expressly otherwise provide or unless the debentures have been redeemed in pursuance of any obligation on the company so do to (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns) shall have power and shall be deemed always to have had power to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power the company shall have power and shall be deemed always to have had power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have and shall be deemed always to have had the same rights and priorities as if the debentures had not previously been issued. 2. Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the company a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section. 3. Where a company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited. 4. Nothing in this section shall prejudice: a) The operation of any judgment or order of a Court of competent jurisdiction pronounced or made before the commencement of this Act as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or b) Any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished reserved to a company by its debentures or the securities for the same. — E. § 104.

Specific performance of contract to subscribe for debentures. 113. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance. — E. § 105.

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge. 114. 1. Where either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge then if the company is not at the time in course of being wound up the debts which in every winding-up are under the provisions of Part IV. of this Act relating to preferential payments to be paid in priority to all other debts shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures. 2. The periods of time mentioned in the said provisions of Part IV. of this Act shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid as the case may be. 3. Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors. — E. § 107.

Statements, books, and accounts.

Exemption of insurance companies. Directors and manager to keep proper books and to prepare annual shareholders' balance-sheet. Copy balance-sheet to be sent to every member and filed with Registrar-General, and post up copy thereof. Contents

of balance-sheet. Reserve fund. 115. 1. This section shall not apply to the life insurance business of any company which is subject to Part III. of the *Companies Act, 1890*, or to any proprietary company. 2. Every company and the directors and manager thereof: a) Shall cause to be kept proper books of account in which shall be kept full, true, and complete accounts of the affairs and transactions of the company; and; b) Shall once at least in each year and at intervals of not more than fifteen months cause the accounts of the company to be balanced and a balance-sheet to be prepared which balance-sheet after being duly audited shall be laid before the members of the company in general meeting; and c) Shall cause a copy of such balance-sheet so audited to be sent to the registered address of every member of the company at least seven days before the meeting at which it is to be laid before the members of the company and a copy to be deposited at the registered office of the company for the inspection of the members and creditors of the company during a period of at least seven days before that meeting; and d) Shall forthwith cause to be filed with the Registrar-General a copy of such balance-sheet and of any auditor's report attached thereto or thereon referred to; and e) Shall cause to be forthwith posted up and until the posting up of the next following balance-sheet kept posted up a printed copy of the same in a conspicuous place in the registered office of the company and in every branch office where the business of the company is carried on, and every creditor of or shareholder in the company or any person acting in his behalf shall be entitled to a copy thereof on payment of sixpence. 3. The balance-sheet shall be audited by the company's auditors as hereinafter provided and shall contain a summary of the share capital of the company its liabilities and its assets giving such particulars as will disclose the general nature of those liabilities and assets and the balance-sheet shall include a statement of profit and loss. The balance sheet may in the case of a banking company and shall in the case of any other company be in one of the forms in the second Schedule to this Act or to the like effect and comply with the directions (if any) at the foot of the form. 4. No balance-sheet, summary, advertisement, statement of assets and liabilities, or other document whatsoever published, issued, or circulated by or on behalf of a company shall contain any direct or indirect representation that the company has any reserve fund unless: a) Such reserve fund is actually existing; and b) The said representation shall be accompanied by a statement showing whether or not such reserve fund is used in the business, and if any portion thereof is otherwise invested showing the manner in which and the securities upon which the same is invested. 5. Any director or manager who shall wilfully alone or in conjunction with any other person sign, publish, issue, or circulate or cause to be signed, published, issued, or circulated any balance-sheet, summary, advertisement, statement of assets and liabilities, or other document in contravention of subsection 4 of this section shall be guilty of a misdemeanour and in addition to any civil responsibility shall on conviction be liable to be imprisoned for any term not exceeding two years; and any director or manager who shall through culpable negligence alone or in conjunction with any other person sign, publish, issue, or circulate or cause to be signed, published, issued, or circulated any balance-sheet, summary, advertisement, statement of assets and liabilities, or other document in contravention of the said subsection shall in addition to any civil responsibility be guilty of an offence and shall on conviction be liable to a penalty not exceeding two hundred and fifty pounds. 6. The manager of every company shall by a statutory declaration verify to the best of his knowledge and belief the correctness of every balance-sheet.

Statement to be published by banking and certain other companies.

Certain companies to publish statement in Schedule. 116. 1. Every company being a limited banking company, or an insurance company, or a deposit, provident, or benefit society shall before it commences business and also at intervals of six months in every year during which it carries on business make a statement in the form marked D in the second Schedule to this Act or as near thereto as circumstances will admit. 2. A copy of the statement shall be put up in a conspicuous place in the registered office of the company and in every branch office or place where the business of the company is carried on. 3. Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding sixpence. 4. If default is made in compliance with this section the company shall be liable to a fine not exceeding five pounds for every day during which the default continues; and every director and manager of the company who knowingly and

wilfully authorizes or permits the default shall be liable to the like penalty. 5. For the purposes of this Act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company. — E. § 108.

Inspection and audit.

Investigation of affairs of company by inspectors. 117. 1. The Governor in Council may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as the Governor in Council may direct: i) In the case of a banking company having a share capital on the application of members holding not less than one-third of the shares issued; ii) In the case of any other company having a share capital on the application of members holding not less than one-tenth of the shares issued; iii) In the case of a company not having a share capital on the application of not less than one-fifth in number of the persons on the company's register of members. 2. The application shall be supported by such evidence as the Governor in Council may require for the purpose of showing that the applicants have good reason for and are not actuated by malicious motives in requiring the investigation, and the Governor in Council may before appointing an inspector require the applicants to give security for payment of the costs of the inquiry. 3. It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power. 4. An inspector may examine on oath the officers and agents of the company in relation to its business and may administer an oath accordingly. 5. If any officer or agent refuses to produce any book or document which under this section it is his duty to produce or to answer any question relating to the affairs of the company he shall be liable to a fine not exceeding five pounds in respect of each offence. 6. On the conclusion of the investigation the inspectors shall report their opinion to the Governor in Council, and a copy of the report shall be forwarded by the Governor in Council to the registered office of the company, and a further copy shall at the request of the applicants for the investigation be delivered to them. The report shall be written or printed as the Governor in Council may direct. 7. All expenses of and incidental to the investigation shall be defrayed by the applicants unless the Governor in Council shall direct the same to be paid by the company which the Governor in Council is hereby authorized to do. — E. § 109.

Power of company to appoint inspectors. 118. 1. A company may by special resolution appoint inspectors to investigate its affairs. 2. Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Governor in Council except that instead of reporting to the Governor in Council they shall report in such manner and to such persons as the company in general meeting may direct. 3. Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed or to answer any question as they would have incurred if the inspectors had been appointed by the Governor in Council. — E. § 110.

Report of inspectors to be evidence. 119. A copy of the report of any inspectors appointed under this Act authenticated by the seal of the company whose affairs they have investigated shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report. — E. § 111.

Appointment and remuneration of auditors. 120. 1. Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting. 2. If an appointment of auditors is not made at an annual general meeting the Governor in Council may on the application of any member of the company appoint an auditor of the company for the current year and fix the remuneration to be paid to him by the company for his services. 3. A director or a partner of a director or an officer or employe of the company shall not be capable of being appointed auditor of the company. 4. No person shall be competent to be appointed or act as auditor who is or becomes indebted to the company. If any person after being appointed an auditor shall become indebted to the company his office shall thereupon become vacant; 5. A person other than a retiring auditor shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting, and the company shall send a copy of any such notice to the retiring auditor

and shall give notice thereof to the shareholders either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting: Provided that if after notice of the intention to nominate an auditor has been so given an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice though not given within the time required by this provision shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may instead of being sent or given within the time required by this provision be sent or given at the same time as the notice of the annual general meeting. 6. The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting unless previously removed by a resolution of the shareholders in general meeting in which case the shareholders at that meeting may appoint auditors. 7. The directors may fill any casual vacancy in the office of auditor but while any such vacancy continues the surviving or continuing auditor or auditors if any may act. 8. The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting or to fill any casual vacancy may be fixed by the directors. — E. § 112.

Powers and duties of auditors. Private balance-sheet. 121. 1. Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors. 2. Every auditor of a company shall use reasonable diligence with the view of ascertaining that the books of the company have been properly kept and record correctly the affairs and transactions of the company. 3. The auditors shall make a report to the shareholders on the accounts examined by them and on every balance-sheet laid before the company in general meeting during their tenure of office, and the report shall state: a) Whether or not they have obtained all the information and explanations they have required; and b) Whether in their opinion the balance-sheet referred to in the report is properly drawn up and exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company. 4. The balance-sheet shall be accompanied by a certificate signed on behalf of the board by two of the directors of the company or if there is only one director resident in Victoria by that director stating that in their or his opinion the balance-sheet is drawn up so as to exhibit a true and correct view of the state of the company's affairs, and the auditors' report shall be attached to the balance-sheet or there shall be inserted at the foot of the balance-sheet a reference to the report and the report shall if any member present so desire be read before the company in general meeting and shall be open to inspection by any shareholder. 5. Any shareholder shall be entitled to be furnished with a copy of the balance-sheet and auditors' report at a charge not exceeding sixpence for every hundred words. 6. If any copy of a balance-sheet which has not been certified and signed as required by this section is issued, circulated, or published or if any copy of a balance-sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section the company and every director, manager, secretary, or other officer of the company who is knowingly a party to the default shall on conviction be liable to a fine not exceeding fifty pounds. 7. The auditors of every company before making a report pursuant to this section shall require, and the directors and manager of the company shall without unnecessary delay supply to the auditors a balance-sheet (in this Act referred to as the private balance-sheet) giving the details on which the shareholders' balance-sheet is founded and showing amongst other things the amount of deduction (if any) for debts considered to be bad or doubtful. 8. The private balance-sheet must be signed by the manager and by each of the directors of the company when there are less than three directors and by two at least when there are more than two directors. 9. The auditors may require the directors and manager of the company to supply in writing signed as hereinbefore provided any further details or information affecting the balance-sheet or any particular item comprised therein, and shall sign a certificate at the foot of the private balance-sheet stating whether or not all their requisitions as auditors have been complied with. 10. The private balance-sheet shall not be issued to the members of the company, but shall together with all

such further details and information as aforesaid be kept by the directors as part of the records of the company. 11. A duplicate of such private balance-sheet and of all such further details and information, which duplicates shall also be signed and certified as in this section provided, shall within seven days from the first general meeting of the company after the private balance-sheet is supplied as aforesaid be by the auditors or one of them deposited with the Registrar-General in a sealed envelope. 12. On the outside of such sealed envelope there shall be legibly written by the auditors the name of the company and a certificate signed by the auditors stating the contents of the envelope and that the requirements of this section have been complied with in respect of such contents. 13. Such sealed envelope shall not be opened except by order of the Court on the application of the Attorney-General or any liquidator of the company, and then only under such conditions as may be ordered by the Court. If any person wilfully contravenes the provisions of this subsection he shall be guilty of an offence and shall on conviction be liable to a penalty not exceeding one hundred pounds or to imprisonment for any term not exceeding six months. — E. § 113.

Rights of preference shareholders, etc., as to receipt and inspection of reports, etc.

122. 1. Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance-sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company. — E. § 114.

No person to act as auditor for any company unless licensed by Companies Auditors' Board. 123. 1. After the commencement of this Act no person shall be appointed or act as an auditor for any company unless he holds from the Companies Auditors' Board appointed under the *Companies Act, 1896*, (which on the commencement of this Act shall cease to exist) or from a Board of three persons one at least of whom shall have been a public accountant practising in Victoria for five years immediately preceding his appointment to be appointed by the Governor in Council a licence authorizing such person to act as an auditor for companies. Such last-mentioned Board shall be called the Companies Auditors' Board, and hereinafter in this section is referred to as "the Board". 2. The persons at the commencement of this Act holding office as members of the Companies Auditors' Board shall without further or other authority than this Act be members of the Board as if they had been appointed by the Governor in Council hereunder; and the said Board notwithstanding the change in the constitution thereof shall be deemed the same before and after such change in the constitution thereof and no act, matter, or thing shall be affected thereby. 3. After the commencement of this Act no person shall be qualified to receive a licence to act as auditor under this Act unless upon examination he satisfies the Board that he has a thorough knowledge of accounts and auditing and also of the provisions of the Companies Acts and such other subjects as may be prescribed, and unless the Board is satisfied with his general conduct and character. 4. For every such licence and examination there shall be paid such fees as may be prescribed. 5. The Board after giving notice to the holder of a licence and giving him an opportunity of being heard shall at any time have power to inquire into the conduct and character as well as the abilities of such holder and to cancel such licence. 6. Any person aggrieved by any decision of the Board as to his conduct and character may within three months from the date of his receiving notice thereof apply to a Judge of a County Court to reverse such decision and thereupon the said Judge may if he think fit reverse the same, and, if the said person aggrieved be otherwise qualified, may direct the Board to issue or re-issue to such person a licence or to refrain from cancelling his licence as the case may require. 7. Any two members of the Board shall have and may exercise all or any of the powers or authorities of the Board. 8. The Governor in Council may at any time remove any member of the Board. 9. Sections one hundred and seventeen to one hundred and twenty-three inclusive shall not apply to a proprietary company.

Carrying on business with less than the legal minimum of members.

Prohibition of carrying on business with fewer than five or in the case of a proprietary company two members. 124. If at any time the number of members of a company is reduced in the case of a proprietary company below two or in the case of any other company below five, and it carries on business for more than six months while the number is so reduced, every person who is a member of the company during

the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or five members as the case may be shall be severally liable for the payment of the whole debts of the company contracted during that time and may be sued for the same without joinder in the action of any other member. — E. § 115. Even where the number of members is less than five the company has power to pass a resolution for winding-up. — In re Johnston, Dunster & Co., 17 V. L. R. 100.

Service and authentication of documents.

Service of documents on company. 125. A document may be served on a company by leaving it at or sending it by post to the registered office of the company. — E. § 116.

Authentication of documents. 126. A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company and need not be under its common seal. — E. § 117.

Tables and forms.

Application and alteration of tables and forms. 127. 1. The forms in the second Schedule to this Act or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer. 2. The Governor in Council may alter any of the tables in the first Schedule to this Act so that he does not increase the amount of fees payable to the Registrar-General in the said Schedule mentioned and may alter or add to the forms in the said second Schedule. 3. Any such table or form when altered shall be published in the *Government Gazette* and thenceforth shall have the same force as if it were included in one of the Schedules to this Act, but no alteration made by the Governor in Council in Table A in the said first Schedule shall affect any company registered before the alteration or repeal as respects that company any portion of that Table. — E. § 118.

Arbitrations.

Arbitration between companies and others. 128. 1. A company may by writing under its common seal agree to refer and may refer to arbitration in accordance with the *Supreme Court Act, 1890*, any existing or future difference between itself and any other company or person. 2. Companies parties to the arbitration may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves or by their directors or other managing body. 3. All the provisions of the *Supreme Court Act, 1890*, shall apply to arbitrations between companies and persons in pursuance of this Act. — E. § 119.

Power to compromise.

Power to compromise with creditors and members. 129. 1. Where a compromise or arrangement is proposed between a company and its creditors or any class of them or between the company and its members or any class of them, the Court may on the application in a summary way of the company or of any creditor or member of the company or in the case of a company being wound up of the liquidator order a meeting of the creditors or class of creditors or of the members of the company or class of members as the case may be to be summoned in such manner as the Court directs. 2. If a majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members as the case may be present either in person or by proxy at the meeting agree to any compromise or arrangement the compromise or arrangement shall if sanctioned by the Court be binding on all the creditors or the class of creditors or on the members or class of members as the case may be and also on the company or in the case of a company in the course of being wound up on the liquidator and contributories of the company. 3. The Court may alter or vary such compromise or arrangement and may impose such conditions in the carrying out thereof as it shall think just. 4. In this section the expression "company" means any company liable to be wound up under this Act. — E. § 120. The Court must assure itself that the scheme proposed is legal. — In re Commercial Bank of Australia, 19 V. L. R. 333, 15 A. L. T. 57. See further In re Carlton Brewery, 8 A. L. R. (C. N.) 37; In re Australian, etc., Bank, 26 V. L. R. 686, 22 A. L. T. 177. Cp. In re Commercial Bank of Australia, 14 A. L. T. 239; Melbourne, etc., Society v. Burston, 21 V. L. R. 531; 17 A. L. T. 178; 1 A. L. R. 160; Gray v. Australian, etc., Bank, 13 A. L. T. 230; In re Premier Permanent Building, etc., Association, 20 A. L. T. 225; 5 A. L. R. 85; In re City of Melbourne Bank, 19 A. L. T. 80; 3 A. L. R. 220; In re Freehold Investment, etc., Co., 1 A. L. R. 12.

Meaning of proprietary company.

Meaning of "proprietary company". Court may determine whether a company certified as a proprietary company is a proprietary company. 130. 1. For the purposes of this Act the expression "proprietary company" means a proprietary company under the *Companies Act, 1896*, and also any company which: i) By its memorandum of association: a) Restricts the right to transfer its shares; and b) Limits the number of its members (exclusive of persons who are in the employment of the company) to fifty; and c) Prohibits the company from receiving deposits except from its members or shareholders for fixed periods or payable at call whether bearing or not bearing interest; and ii) Has received a certificate of incorporation in which the Registrar-General certifies that the company is a proprietary company. 2. The provisions of the memorandum so far as they restrict, limit, or prohibit as aforesaid shall be unalterable except in manner provided in subsection 5 of this section, and any act, matter, or thing done in contravention of any of the said provisions shall be unlawful and void. 3. The word "proprietary" shall form part of the name of a proprietary company and shall be inserted immediately before the word "limited." 4. A public company may by special resolution determine to alter: a) the name of the company by inserting the word "proprietary" immediately before the word "limited" and b) the provisions of its memorandum so as to restrict, limit, and prohibit as aforesaid and upon the filing of a copy of the resolution the Registrar-General shall issue a certificate of incorporation altered so as to certify that the company is a proprietary company. 5. A proprietary company may subject to anything contained in the memorandum or articles by passing a special resolution determine: a) that the word "proprietary" be omitted from its name, and b) that the company be turned into a public company and by filing with the Registrar-General a copy thereof and also such a statement in lieu of prospectus as the company if a public company would have had to file before allotting any of its shares or debentures together with such a statutory declaration as the company if a public company would have had to file before commencing business, turn itself into a public company and thereupon the restrictions, limitations, and prohibitions mentioned in subsection 1 of this section and embodied in the memorandum of association of such company shall cease to apply to such company. 6. Where two or more persons hold one or more shares in a company jointly they shall for the purposes of this section be treated as a single member. 7. The Court may on the application of the Attorney-General or Solicitor-General or of any member or creditor of any company certified by the Registrar-General as a proprietary company determine whether such company is a proprietary company within the meaning of this Act, and if the Court determine that it is not a proprietary company it shall order that the word "proprietary" be removed from its name and thereupon the company shall be a limited company under this Act and subject to all the provisions and conditions herein contained except those relating to proprietary companies. 8. Where any alteration has been made under this section in the memorandum of a company every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration. 9. In this section "public company" shall mean a limited company other than a proprietary company. — E. § 121.

*Part IV. Winding-up.**Preliminary.*

Modes of winding-up. 131. 1. The winding-up of a company may be either: i) By the Court; or ii) Voluntary; or iii) Subject to the supervision of the Court. 2. The provisions of this Act with respect to winding-up apply unless the contrary appears to the winding-up of a company in any of those modes. 3. The word "company" in this Part of this Act shall include a building society under the *Building Societies Act, 1890*. — E. § 122.

Contributories.

Liability as contributories of present and past members. 132. 1. In the event of a company being wound up every present and past member shall subject to the provisions of this section be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding-up and for the adjustment of the rights of the contributories among themselves with the qualifications following (that is to say): i) A past member shall not be liable to contribute if he has ceased to be a member for one year

or upwards before the commencement of the winding-up; ii) A past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member; iii) A past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act; iv) In the case of a company limited by shares no contribution shall be required from any member exceeding the amount if any unpaid on the shares in respect of which he is liable as a present or past member; v) In the case of a company limited by guarantee no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up; vi) Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the funds of the company are alone made liable in respect of the policy or contract; vii) A sum due to any member of a company in his character of a member by way of dividends, profits, or otherwise shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves. 2. In the winding-up of a limited company any director or manager whether past or present whose liability is in pursuance of this Act unlimited shall in addition to his liability (if any) to contribute as an ordinary member be liable to make a further contribution as if he were at the commencement of the winding-up a member of an unlimited company: Provided that: i) A past director or manager shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding-up; ii) A past director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office; iii) Subject to the articles of the company a director or manager shall not be liable to make such further contribution unless the Court deems it necessary to require that contribution in order to satisfy the debts and liabilities of the company and the costs, charges, and expenses of the winding-up. 3. In the winding-up of a company limited by guarantee which has a share capital every member of the company shall be liable in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up to contribute to the extent of any sums unpaid on any shares held by him. — E. § 123.

Definition of contributory. 133. The term "contributory" means every person liable to contribute to the assets of the company in the event of its being wound up and in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories includes any person alleged to be a contributory. — E. § 124. A person may be a member of a company without having complied with all the formalities. Where he has been treated as a member the circumstances may be such that both he and the company will be estopped from denying that he is a shareholder. — *In re Switchback Ry.*, 16 V. L. R. 339; 11 A. L. T. 191. Or, there may have been acquiescence with knowledge, although there was no original contract. — *Essendon Land, etc., Assn. v. Kilgour*, 24 V. L. R. 136; 19 A. L. T. 164; 4 A. L. R. 1. See further, as to estoppel on the question whether a person is a member, *In re City of Melbourne Bank*, 22 V. L. R. 243; 17 A. L. T. 318; 2 A. L. R. 191; *In re City & County Property Bank*, 22 V. L. R. 235; 18 A. L. T. 86; 2 A. L. R. (C. N.) 322. See also *In re Australian Producers & Traders*, (1906), V. L. R. 511; 28 A. L. T. 80; 12 A. L. R. 445.

Nature of liability of contributory. 134. The liability of a contributory shall create a debt of the nature of a specialty accruing due from him at the time when his liability commenced but payable at the times when calls are made for enforcing the liability. — E. § 125.

Contributories in case of death of member. 135. If a contributory dies either before or after he has been placed on the list of contributories his personal representatives and his heirs and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly. 2. Where the personal representatives are placed on the list of contributories the heirs or devisees need not, but may be, added as and when the Court thinks fit. 3. If the personal representatives make default in paying any money ordered to be paid by them proceedings may be taken for administering the personal and real estates of the deceased contributory or either of them and of compelling payment thereof of the money due. — E. § 126. See note to N. S. W. a. (No. 40

of 1899) § 81. — Upon the death of a joint tenant of shares the liability for calls accruing subsequently devolves upon the survivor. — *National Trustees, etc., Co. v. Walsh*, 21 V. L. R. 75; 17 A. L. T. 75; 1 A. L. R. 60; *Mercantile Bank v. Dinwoodie*, 28 V. L. R. 21.

Contributories in case of insolvency of member. 136. If a contributory becomes insolvent either before or after he has been placed on the list of contributories then: 1. His trustee in insolvency shall represent him for all the purposes of the winding-up and shall be a contributory accordingly and may be called on to admit to proof against the estate of the insolvent or otherwise to allow to be paid out of his assets in due course of law any money due from the insolvent in respect of his liability to contribute to the assets of the company; and 2. There may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made. — E. § 127.

Winding-up by Court.

Circumstances in which company may be wound up by court. 137. A company may be wound up by the Court: i) If the company has by special resolution resolved that the company be wound up by the Court; ii) If default is made in filing the statutory report or in holding the statutory meeting; iii) If the company does not commence its business within a year from its incorporation or suspends its business for a whole year; iv) If the number of members is reduced in the case of a proprietary company below two or in the case of any other company below five; v) If the company is unable to pay its debts; vi) If the Court is of opinion that it is just and equitable that the company should be wound up. — E. § 129. The Court, having regard to the wishes of the creditors, may order the compulsory winding-up of a company, even though the shareholders have passed a resolution for the voluntary winding-up. — *In re Cooperative, etc., Association*, 8 V. L. R. (E.) 227. The fact that the company is carrying on business at a loss, that it is largely indebted, etc., held, under the circumstances, not a sufficient ground for a compulsory order. — *In re Buzolich Paint Co.*, 10 V. L. R. (E.) 276, 281, 282; 6 A. L. T. 130. A creditor, though he shows that he comes within the terms of the Act is not entitled as of right to a winding-up order. — *In re Polynesia Co.*, 4 A. J. R. 47. A petition under this section is to be accepted without verification, and is afterwards to be verified by an affidavit made and filed within four days. — *In re Malmsbury, etc., Co.*, 3 W. W. & a' B. (E.) 81. Where the petition is based on subsection (V.), but there is a *bona fide* dispute as to the debt, the petition will be dismissed. — *In re Alderney Dairy Co.*, 11 V. L. R. 628; 7 A. L. T. 77. Making calls and incurring debts is not commencing business within the meaning of subsection (III). — *In re The Shelbourne Cheese Co.*, 14 V. L. R. 294. The Court in passing on the question of a compulsory winding-up will have special regard to the wishes of creditors. — *In re Federal Land Co.*, 15 V. L. R. 135, 153; 10 A. L. T. 221, Subsections (I.) and (II.) only define certain facts which, when proved, at once establish an inability to pay. The subsections in no way limit the generality of subsection (VI.). — *In re Premier, etc., Association*, 16 V. L. R. 21; 11 A. L. T. 139. The Court has jurisdiction to make an order winding-up a foreign company registered in Victoria. — *In re Egerton & Gordon C. G. M. Co.*, (1908), V. L. R. 92.

Company when deemed unable to pay its debts. 138. A company shall be deemed to be unable to pay its debts: i) If a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding fifty pounds then due has served on the company by leaving the same at its registered office a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or ii) If execution or other process issued on a judgment, decree, or order of any Court in favour of a creditor of the company is returned unsatisfied in whole or in part; or iii) If it is proved to the satisfaction of the Court that the company is unable to pay its debts; and in determining whether a company is unable to pay its debts the Court shall take into account the contingent and prospective liabilities of the company. — E. § 130.

Provisions as to applications for winding-up. 139. 1. An application to the Court for the winding-up of a company shall be by petition presented subject to the provisions of this section either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties together or separately: Provided that: a) A contributory shall not be entitled to present a petition for winding-up a company unless: i) Either the number of members is reduced in the case of a proprietary company below two or in the case of any other company below five; or ii) The shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him and registered in his name for at least six months during the eighteen months before the commencement of the winding-up or have devolved

on him through the death of a former holder; and b) A petition for winding-up a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder nor before the expiration of fourteen days after the last day on which the meeting ought to have been held; and c) The Court shall not give a hearing to a petition for winding-up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding-up has been established to the satisfaction of the Court. 2. Where a company is being wound up voluntarily or subject to supervision a petition may be presented by the liquidator as well as by any other person authorized in that behalf under the other provisions of this section, but the Court shall not make a winding-up order on the petition unless it is satisfied that the voluntary winding-up or winding-up subject to supervision can not be continued with due regard to the interests of the creditors or contributories. — E. § 137. Where two petitions are presented priority will be given to the one first presented, irrespective of the order in which they appeared in the newspaper advertisements. But both petitions may be heard. Only the costs of the first petition will be allowed. — *In re Provincial and Suburban Bank*, 5 V. L. R. (E.) 159, 174, 177, 179, 1 A. L. T. 15. A company may present a petition for the winding-up of another company. — *In re Federal Land Co.*, 15 V. L. R. 135; 10 A. L. T. 221; *In re New Imperial T. M. Co.*, 12 V. L. R. 775. The directors of a company have no power to petition for its winding-up. — *In re Standard Bank of Australia*, 24 V. L. R. 304; 4 A. L. R. 287.

Effect of winding-up order. 140. An order for winding-up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory. — E. § 138.

Commencement of winding-up by Court. 141. A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up. — E. § 139. Cp. *In re City of Melbourne Bank*, 17 A. L. T. 296; 2 A. L. R. 81.

Powers to stay or restrain proceedings against company. 142. At any time after the presentation of a petition for winding-up and before a winding-up order has been made the company or any creditor or contributory may where any action or proceeding against the company is pending apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit. — E. § 140.

Powers of Court on hearing petition. 143. 1. On hearing the petition the Court may dismiss it with or without costs or adjourn the hearing conditionally or unconditionally or make any interim order or any other order that it deems just, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets or that the company has no assets. 2. Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting the Court may order the costs to be paid by any persons who in the opinion of the Court are responsible for the default. — E. § 141.

Actions stayed on winding-up order. 144. When a winding-up order has been made no action or proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose. — E. § 142. As to practice, see *In re Melbourne, etc., Co.*, 1 W. W. & a' B. (E.) 166; *De Alba v. Freehold Investment & Banking Co.*, 16 A. L. T. 165; *In re Standard Bank*, 5 A. L. R. (C. N.) 5.

Copy of order to be forwarded to Registrar-General. 145. On the making of a winding-up order a copy of the order must forthwith be filed with the Registrar-General who shall make a minute thereof in his books relating to the company. — E. § 143.

Power of Court to stay winding-up. 146. The Court may at any time after an order for winding-up on the application of any creditor or contributory and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed make an order staying the proceedings either altogether or for a limited time on such terms and conditions as the Court thinks fit. — E. § 144.

Court may have regard to wishes of creditors or contributories. 147. The Court may as to all matters relating to a winding-up have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence. — E. § 145.

Liquidators.

Appointment of official liquidators. 148. For the purpose of conducting the proceedings in winding-up companies and assisting the Court therein the Governor in Council may from time to time appoint such and so many persons as he thinks fit to be official liquidators, and may require of such persons such security as he thinks fit and may remove the same, and in such case or in the case of the death or resignation of any liquidator the Governor in Council may appoint another in his stead. If no official liquidator be nominated or during any vacancy therein all the property of every company in course of being wound up by the Court shall be deemed to be in the custody of the Court. — E. § 149. *Seem*, on an order for a voluntary winding-up under supervision of the court, the court may remove liquidators appointed by the shareholders, and appoint others selected by the creditors, disregarding the official liquidators appointed under this section. — In re Provincial and Suburban Bank, 5 V. L. R. (E.) 159, 178. The remuneration, under f. (No. 1482) § 130 (4), *infra*, is limited to £ 10. — In re Standard Bank of Australia, 25 V. L. R. 44; 5 A. L. R. (C. N.) 83. See further as to practice under § 88, In re Premier Permanent Bldg., etc., Association, 25 A. L. T. 8; 9 A. L. R. 115.

Appointment of official liquidators. 149. 1. On an order being made by the Court for the winding-up of a company the Court may appoint an official liquidator or official liquidators to be liquidator or liquidators of the company. 2. The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding-up. — E. § 149.

Meetings of creditors and contributories. 150. 1. When a winding-up order has been made by the Court the official liquidator shall summon separate meetings of the creditors and contributories of the company for the purpose of: a) Determining whether or not an application is to be made to the Court for appointing a liquidator in the place of the official liquidator; and b) Determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed. 2. The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions of this section the Court shall decide the difference and make such order thereon as the Court may think fit. 3. In case a liquidator is not appointed by the Court an official liquidator shall be the liquidator of the company. 4. In case a liquidator or liquidators be appointed by the Court the official liquidator shall be paid by the liquidator or liquidators out of the assets of the company as remuneration for his services such sum not exceeding ten pounds over and above his actual disbursements as the Court may determine. — E. § 152.

Appointment, remuneration, and title of liquidators. 151. 1. When a person other than an official liquidator is appointed liquidator under the provisions of this Act he shall not be capable of acting as liquidator until he has filed a notice of his appointment with the Registrar-General and given security in the prescribed manner to the satisfaction of the Court. 2. While an official liquidator is in office all the provisions in this Act hereinafter contained applying to liquidators shall apply to such official liquidator. 3. If more than one liquidator is appointed by the Court the Court shall declare whether any act by this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed. 4. A liquidator appointed by the Court may resign or on cause shown be removed by the Court. 5. A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court. An official liquidator shall by virtue of his office be the liquidator during the vacancy. 6. A liquidator shall receive such salary or remuneration by way of percentage or otherwise as the Court may direct, and if more such persons than one are appointed liquidators their remuneration shall be distributed among them in such proportions as the Court directs. 7. A liquidator shall be described by the style of the liquidator of the particular company in respect of which he is appointed and not by his individual name. 8. The acts of a liquidator shall be valid notwithstanding any defects that may afterwards be discovered in his appointment or qualification. — E. § 149. In fixing the remuneration of the liquidator the Court will generally follow the regulations made in England, and set forth in L. R. 3, Ch. p. LXIV. — In re British Bank of Australia, 19 V. L. R. 54; 14 A. L. T. 227. See also in re British Bank of Australia, 14 A. L. T. 73.

Statement of company's affairs to be submitted to liquidator. 152. 1. Where the Court has made a winding-up order there shall be made out and submitted to the

liquidator a statement as to the affairs of the company in the prescribed form verified by affidavit and showing the particulars of its assets, debts, and liabilities the names, residences, and occupations of its creditors, the securities held by them respectively the dates when the securities were respectively given and such further or other information as may be prescribed or as the liquidator may require. 2. The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company or by such of the persons being or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the winding-up order as the liquidator subject to the direction of the Court may require to submit and verify the same. 3. The statement shall be submitted within fourteen days from the date of the order or within such extended time as the liquidator or the Court may for special reasons appoint. 4. Any persons making or concurring in making the statement and affidavit required by this section shall be allowed and shall be paid by the liquidator out of the assets of the company such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the liquidator may consider reasonable subject to an appeal to the Court. 5. If any person without reasonable excuse makes default in complying with the requirements of this section he shall be liable to a fine not exceeding ten pounds for every day during which the default continues. 6. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times on payment of the prescribed fee to inspect the statement submitted in pursuance of this section and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall be punishable accordingly on the application of the liquidator. — E. § 147.

Report by liquidator. 153. 1. Where the Court has made a winding-up order the liquidator shall as soon as practicable after receipt of the statement of the company's affairs submit a preliminary report to the Court: a) As to the amount of capital issued subscribed and paid up and the estimated amount of assets and liabilities; and b) If the company has failed as to the causes of the failure; and c) Whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company or the conduct of the business thereof. 2. The liquidator may also if he thinks fit make a further report or further reports stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any director or other officer of the company in relation to the company since the formation thereof and any other matters which in his opinion it is desirable to bring to the notice of the Court. — E. § 148.

Custody of company's property. 154. In a winding-up by the Court the liquidator shall take into his custody or under his control all the property and things in action to which the company is or appears to be entitled. — E. § 150.

Powers of liquidator. 155. 1. The liquidator in a winding-up by the Court shall have power with the sanction either of the Court or of the committee of inspection: a) To bring or defend any action or other legal proceeding in the name and on behalf of the company; b) To carry on the business of the company so far as may be necessary for the beneficial winding-up thereof; c) To employ a solicitor or other agent to take any proceedings or do any business which the liquidator is unable to take or do himself; but the sanction in this case must be obtained before the employment except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction. 2. The liquidator in a winding-up by the Court shall have power: a) To sell the real and personal property and things in action of the company by public auction or private contract with power to transfer the whole thereof to any person or company or to sell the same in parcels; b) To do all acts and to execute in the name and on behalf of the company all deeds, receipts, and other documents and for that purpose to use when necessary the company's seal; c) To prove, rank, and claim in the bankruptcy, insolvency, or sequestration of any contributory for any balance against his estate and to receive dividends in the bankruptcy, insolvency, or sequestration in respect of that balance as a separate debt due from the bankrupt or insolvent and rateably with the other separate creditors; d) To draw, accept, make, and indorse any bill of exchange or promissory note in

the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or indorsed by or on behalf of the company in the course of its business; e) To raise on the security of the assets of the company any money requisite; f) To take out in his official name letters of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which can not be conveniently done in the name of the company, and in all such cases the money due shall for the purpose of enabling the liquidator to take out the letters of administration or recover the money be deemed to be due to the liquidator himself; g) To do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets. 3. The exercise by the liquidator in a winding-up by the Court of the powers conferred by this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers. 4. Where a liquidator is provisionally appointed by the Court, the Court may limit and restrict his powers by the order appointing him. — E. § 151. The Court may sanction a lease. — *In re Premier, etc., Society*, 16 V. L. R. 643; 12 A. L. T. 113. See also *Jones v. Davies Franklin Cycle Co.*, 27 V. L. R. 649; 8 A. L. R. (C. N.) 17.

Payments of liquidator into bank. 156. 1. Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as the rules may from time to time appoint, pay the money received by him into such bank and account as the rules may from time to time appoint or as the Court shall direct. 2. If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Court in any particular case authorizes him to retain, then unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court and shall be liable to pay any expense occasioned by reason of his default. 3. A liquidator of a company which is being wound up by the Court shall not pay any sums received by him as liquidator into his private banking account. — E. § 154. As to practice under subsection (1) see *In re Real Estate, etc., Bank*, 18 A. L. T. 241; 3 A. L. R. (C. N.) 29.

Audit of liquidator's accounts. 157. 1. Every liquidator of a company which is being wound up by the Court shall at such times as may be prescribed but not less than twice in each year during his tenure of office file with the Registrar-General an account of his receipts and payments as liquidator. 2. The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form. 3. The liquidator shall cause the account to be audited by an auditor appointed by the Court which appointment may be for the whole period of the liquidation and for the purpose of the audit the liquidator shall furnish the auditor with such vouchers and information as he may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator. 4. When the account has been audited a copy thereof shall be filed and kept by the liquidator and shall be open to the inspection of any creditor or of any person interested. 5. The liquidator shall cause the account when audited or a summary thereof to be printed and shall send a printed copy of the account or summary by post to every creditor and contributory. — E. § 155. This section applies to voluntary liquidations. — *In re Broken Hill Coffee Palace Co.*, 3 A. L. R. (C. N.) 57. Under subsection (2) the Court will not, as a rule, appoint an auditor recommended by the liquidator, but will appoint one independently. — *In re South Suburban Land Co.*, 23 V. L. R. 434; 19 A. L. T. 169; 4 A. L. R. 21. See further as to practice under this section, *In re Goulburn Valley Butter Co.*, 25 V. L. R. 334; 21 A. L. T. 137; 5 A. L. R. (C. N.) 85; *In re Empire Permanent Bldg. Society*, 5 A. L. R. (C. N.) 29; *In re Premier Permanent Bldg., etc., Association*, 26 V. L. R. 403; *In re Premier Permanent Bldg., etc., Association*, 7 A. L. R. (C. N.) 13.

Books to be kept by liquidator. 158. Every liquidator of a company which is being wound up by the Court shall keep in manner prescribed proper books in which he shall cause to be made entries or minutes of proceedings at meetings and of such other matters as may be prescribed and any creditor or contributory may subject to the control of the Court personally or by his agent inspect any such books. — E. § 156.

Release of liquidators. 159. 1. When the liquidator of a company which is being wound up by the Court has realized all the property of the company or so much

thereof as can, in his opinion, be realized without needlessly protracting the liquidation and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves and made a final return if any to the contributories or has resigned or has been removed from his office, the Court shall on his application cause a report on his accounts to be prepared and on his complying with all the requirements of the Court shall take into consideration the report and any objection which may be urged by any creditor or contributory or person interested against the release of the liquidator and shall either grant or withhold the release accordingly. 2. Where the release of a liquidator is withheld the Court may on the application of any creditor or contributory or person interested make such order as it thinks just charging the liquidator with the consequences of any act or default which he may have done or made contrary to his duty. 3. An order of the Court releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact. 4. Where the liquidator, has not previously resigned or been removed his release shall operate as a removal of him from his office. — E. § 157.

Exercise and control of liquidator's powers. 160. 1. Subject to the provisions of this Act, the liquidator of a company which is being wound up by the Court shall in the administration of the assets of the company and in the distribution thereof among its creditors have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection. 2. The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes and it shall be his duty to summon meetings at such times as the creditors or contributories by resolution either at the meeting appointing the liquidator or otherwise may direct or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be. 3. The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding-up. 4. Subject to the provisions of this Act the liquidator, shall use his own discretion in the management of the estate and its distribution among the creditors. 5. If any person is aggrieved by any act or decision of the liquidator that person may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of and make such order in the premises as it thinks just. — E. § 158.

Control of Court over liquidators. 161. 1. The Court shall take cognisance of the conduct of liquidators of companies which are being wound up by the Court and if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by statute, rules, or otherwise with respect to the performance of his duties or if any complaint is made to the Court by any creditor or contributory in regard thereto the Court shall inquire into the matter and take such action thereon as it may think expedient. 2. The Court may at any time require any liquidator of a company which is being wound up by the Court to answer any inquiry in relation to any winding-up in which he is engaged and may if the Court think fit examine him or any other person on oath concerning the winding-up. 3. The Court may also direct a local investigation to be made of the books and vouchers of the liquidator. — E. § 159.

Committee of inspection, special manager, receiver.

Committee of inspection. 162. 1. A committee of inspection appointed in pursuance of this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in such proportions as may be agreed on by the meetings of creditors and contributories or as in case of difference may be determined by the Court. 2. The committee shall meet at such times as they from time to time appoint and failing such appointment at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary. 3. The committee may act by a majority of their members present at a meeting but shall not act unless a majority of the committee are present. 4. Any member of the committee may resign by notice in writing signed by him and delivered to the liquidator. 5. If a

member of the committee becomes insolvent or compounds or arranges with his creditors or is absent from five consecutive meetings of the committee without the leave of those members who together with himself represent the creditors or contributories as the case may be his office shall thereupon become vacant. 6. Any member of the committee may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors) or of contributories (if he represents contributories) of which seven days' notice has been given stating the object of the meeting. 7. On a vacancy occurring in the committee the liquidator shall forthwith summon a meeting of creditors or of contributories as the case may require to fill the vacancy and the meeting may by resolution re-appoint the same or appoint another creditor or contributory to fill the vacancy. 8. The continuing members of the committee if not less than two may act notwithstanding any vacancy in the committee. 9. If there is no committee of inspection any act or thing or any direction or permission by this Act authorized or required to be done or given by the committee may be done or given by the Court on the application of the liquidator. — E. § 160.

Power to appoint special manager. 163. 1. The liquidator of a company whether provisional or otherwise which is being wound up by the Court may if satisfied that the nature of the estate or business of the company or the interests of the creditors or contributories generally require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may on such application appoint a special manager thereof to act during such time as the Court may direct, with such powers including any of the powers of a receiver or manager as may be intrusted to him by the Court. 2. The special manager shall give such security and account in such manner as the Court may direct. 3. The special manager shall receive such remuneration as may be fixed by the Court. 4. The special manager may at any time be removed by the Court. — E. § 161.

Power to appoint liquidator as receiver for debenture holders or creditors. 164. Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company which is being wound up by the Court the liquidator may be so appointed. — E. § 162.

Ordinary powers of Court.

Settlement of list of contributories and application of assets. 165. 1. As soon as may be after making a winding-up order the Court shall settle a list of contributories with power to rectify the register of members in all cases where rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities. 2. In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable to the debts of others. — E. § 163. A shareholder seeking to have his name removed from the list of contributories on the ground that he was induced by fraud to take shares must show that before the commencement of the winding-up he had repudiated the contract, and had taken proceedings to have his name removed from the register. Mere repudiation is not sufficient. — *In re Gambrianus, etc., Brewery Co.*, 12 V. L. R. 446; *Ex parte Burdekin*, 11 A. L. T. 96; *Whittlesea Land Co. v. Gutheil*, 18 V. L. R. 557; 14 A. L. T. 48.

Power to require delivery of property. 166. The Court may at any time after making a winding-up order require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, convey, surrender, or transfer forthwith or within such time as the Court directs to the liquidator any money, property, or books and papers in his hands to which the company is *prima facie* entitled. — E. § 164. On overdue calls the Court may order the payment of interest at a rate different from that fixed by the articles of association. — *In re Spottiswoode Estate Co.*, 21 V. L. R. 334; 17 A. L. T. 27; 1 A. L. R. 26.

Power to order payment of debts by contributory. 167. 1. The Court may at any time after making a winding-up order make an order on any contributory for the time being settled on the list of contributories to pay in manner directed by the order any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act. 2. The Court in making such an order may in the case of an unlimited company allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member

of the company in respect of any dividend or profit, and may in the case of a limited company make to any director or manager whose liability is unlimited or to his estate the like allowance. 3. But in the case of any company whether limited or unlimited when all the creditors are paid in full any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call. — E. § 165.

Powers of Court to make calls. 168. 1. The Court may at any time after making a winding-up order and either before or after it has ascertained the sufficiency of the assets of the company make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company and the costs, charges, and expenses of winding-up and for the adjustment of the rights of the contributories among themselves. 2. In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call. — E. § 166.

Power to order payment into bank. 169. 1. The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into some bank named in such order to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator. 2. All moneys and securities paid or delivered into any bank in the event of a winding-up by the Court shall be subject in all respects to the orders of the Court — E. § 167.

Order on contributory conclusive evidence. 170. 1. An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money if any thereby appearing to be due or ordered to be paid is due. 2. All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings except proceedings against the real estate of a deceased contributory in which case the order shall be only prima facie evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made. — E. § 168.

Power to exclude creditors not proving in time. 171. The Court may fix a time or times within which creditors are to prove their debts or claims or to be excluded from the benefit of any distribution made before those debts are proved. — E. § 169. Where justice requires a creditor may be allowed to prove even after the time fixed by the Court has elapsed. — *Macredy v. Drew*, 17 A. L. T. 10.

Adjustment of rights of contributories. 172. The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto. — E. § 170.

Power to order costs. 173. The Court may in the event of the assets being insufficient to satisfy the liabilities make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding-up in such order of priority as the Court thinks just. — E. § 171. See *In re People's Daily, etc., Co.*, (1907), V. L. R. 666.

Dissolution of company. 174. 1. When the affairs of a company have been completely wound up the Court shall make an order that the company be dissolved from the date of the order and the company shall be dissolved accordingly. 2. The order shall be reported by the liquidator to the Registrar-General who shall make in his books a minute of the dissolution of the company. 3. If the liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which he is in default. — E. § 172.

Delegation to liquidator of certain powers of Court. 175. General rules may be made for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Act in respect of the matters following to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of: a) Holding and conducting meetings to ascertain the wishes of creditors and contributories; b) Settling lists of contributories and rectifying the register of members where required and collecting and applying the assets; c) Requiring delivery of property or documents to the liquidator; d) Making calls; e) Fixing a time within which debts and claims must be proved: Provided that the liquidator shall not without the special leave of the Court rectify the register of members and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection. — E. § 173.

Extraordinary powers of Court.

Power to summon persons suspected of having property of company. 176. 1. The Court may after it has made a winding-up order summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs, or property of the company. 2. The Court may examine him on oath concerning the same either by word of mouth or on written interrogatories and may reduce his answers to writing and require him to sign them. 3. The Court may require him to produce any books and papers in his custody or power relating to the company, but where he claims any lien on books or papers produced by him the production shall be without prejudice to that lien and the Court shall have jurisdiction in the winding-up to determine all questions relating to that lien. 4. If any person so summoned after being tendered a reasonable sum for his expenses refuses to come before the Court at the time appointed not having a lawful impediment (made known to the Court at the time of its sitting and allowed by it) the Court may cause him to be apprehended and brought before the Court for examination. — E. § 174. The persons summoned must be those whom the Court deems capable of giving information. The Court can not delegate this power to a liquidator nor authorise a liquidator to summon whom he pleases. The witnesses may be examined regarding names on the share register, and how such entries were made. Where a liquidator applies for an order under this section, the application may be *ex parte*, and no affidavit is necessary. — *In re Broken Hill, etc., Smelting Co.*, 19 V. L. R. 111; 14 A. L. T. 261.

Power to order public examination of promoters, directors, etc. 177. 1. When an order has been made for winding-up a company by the Court and the liquidator has made a further report under this Act stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since its formation the Court may after consideration of the report direct that any person who has taken any part in the promotion or formation of the company or has been a director or officer of the company shall attend before the Court on a day appointed by the Court for that purpose and be publicly examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as director or officer thereof. 2. The liquidator and any creditor or contributory may take part in the examination either personally or by solicitor or counsel. 3. The Court may put such questions to the person examined as the Court thinks fit. 4. The person examined shall be examined on oath and shall answer all such questions as the Court may put or allow to be put to him. 5. A person ordered to be examined under this section shall at his own cost before his examination be furnished with a copy of the liquidator's report and may at his own cost employ a solicitor with or without counsel who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him: Provided that if he is in the opinion of the Court exculpated from any charges made or suggested against him the Court may allow him such costs as in its discretion it may think fit. 6. Notes of the examination shall be taken down in writing and shall be read over to or by and signed by the person examined and may thereafter be used in evidence against him and shall be open to the inspection of any creditor or contributory at all reasonable times. 7. The Court may if it thinks fit adjourn the examination from time to time. 8. An examination under this section may if the Court so directs and subject to general rules be held before any Judge of the Court of Insolvency named for the purpose by the Court and the powers of the Court under this section as to the conduct of the examination but not as to costs may be exercised by such Judge. — E. § 175. The power of the Court under subsection (1) can be exercised only when facts suggestive of fraud are shown. — *In re Rubber Inventions Co.*, 14 A. L. R. 350.

Power to arrest absconding contributory. 178. The Court at any time either before or after making a winding-up order on proof of probable cause for believing that a contributory is about to quit Victoria or otherwise to abscond or to remove or conceal any of his property for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company may cause the contributory to be arrested and his books and papers and moveable personal property to be seized and him and them to be safely kept until such time as the Court may order. — E. § 176.

Powers of Court cumulative. 179. Any powers by this Act conferred on the Court shall be in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company or the estate of any contributory or debtor for the recovery of any call or other sums. — E. § 177.

Enforcement of and appeal from orders.

Power to enforce orders. 180. Orders made by the Court under this Act may be enforced in the same manner as orders made in any action pending therein. — E. § 178.

Appeals from order. 181. Subject to rules of Court an appeal from any order or decision made or given in the winding-up of a company by the Court under this Act shall lie in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its ordinary jurisdiction. — E. § 181.

Voluntary winding-up.

Circumstances in which company may be wound up voluntarily. 182. A company may be wound up voluntarily: 1. When the period (if any) fixed for the duration of the company by the articles expires or the event (if any) occurs on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily. 2. If the company resolves by special resolution that the company be wound up voluntarily. 3. If the company resolves by extraordinary resolution to the effect that it can not by reason of its liabilities continue its business and that it is advisable to wind up. — E. § 182. For a case under subsection (3), decided under the Act of 1864, see *In re Household Cooperative Supply Co.*, 11 V. L. R. 295; 6 A. L. T. 247. For one decided under the Act of 1890, see *Jean Biencourt & Co. v. Milnes*, 15 A. L. T. 237. The resolution to wind up voluntarily is not invalid on the ground that it also provides for the appointment of named liquidators. — *James v. Evening Standard Newspaper Co.*, 21 V. L. R. 399; 17 A. L. T. 5. Nor is an extraordinary resolution passed in compliance with subsection (III.) invalid because described and registered as a special resolution. — *Mercantile Bank v. Dinwoodie*, 25 V. L. R. 491; 24 A. L. T. 103; 8 A. L. R. 250.

Commencement of voluntary winding-up. 183. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing the winding-up. — E. § 183.

Effect of voluntary winding-up on status of company. 184. When a company is wound up voluntarily the company shall from the commencement of the winding-up cease to carry on its business except so far as may be required for the beneficial winding-up thereof: Provided that the corporate state and corporate powers of the company shall notwithstanding anything to the contrary in its articles continue until it is dissolved. — E. § 184. See *In re Buzolich Paint Co.*, 12 V. L. R. 215; 7 A. L. T. 138.

Notice of resolution to wind up voluntarily. 185. When a company has resolved by special or extraordinary resolution to wind up voluntarily it shall give notice of the resolution by advertisement in the *Government Gazette*. — E. § 158. Cp. *McLean Bros. v. Rigg & Grice*, 4 C. L. R. 835.

Consequences of voluntary winding-up. 186. The following consequences shall ensue on the voluntary winding-up of a company: i) The property of the company shall be applied in satisfaction of its liabilities *pari passu*, and subject thereto shall unless the articles otherwise provide be distributed among the members according to their rights and interests in the company; ii) The company in general meeting shall appoint one or more liquidators for the purpose of winding-up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him or them; iii) On the appointment of a liquidator all the powers of the directors shall cease except so far as the company in general meeting or the liquidator sanctions the continuance thereof; iv) The liquidator may without the sanction of the Court exercise all powers by this Act given to the liquidator in a winding-up by the Court; v) The liquidator may exercise the powers of the Court under this Act of settling a list of contributories and of making calls and shall pay the debts of the company and adjust the rights of the contributories among themselves; vi) The list of contributories shall be *prima facie* evidence of the liability of the persons named therein to be contributories; vii) When several liquidators are appointed every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment or in default of such determination by any number not less than

two; viii) If from any cause whatever there is no liquidator acting the Court may on the application of a contributory appoint a liquidator; ix) The Court may on cause shown remove a liquidator and appoint another liquidator. — E. § 186. Where the liquidators in pursuance of subsection (V.) have placed the name of a person on the list of contributories, and such person has received no notice of intention to settle such list, he may apply to the Court for an order to have his name removed. — In re Companies Statute, 1864, 15 V. L. R. 525; 11 A. L. T. 101. The same rules apply in settling the list of contributories as in the case of a winding-up by the Court. — Ibid. The list of contributories must be settled before a call can be made by the liquidator. — In re Mercantile Bank, 14 A. L. T. 92. Merely copying out the register of members is not settling the list of contributories. — *Jean Biencourt & Co. v. Milnes*, 15 A. L. T. 237. The Court may restrain the liquidator from calling up the uncalled capital. — *Terry v. Carlton, etc., Breweries*, 22 V. L. R. 33; 2 A. L. R. 101. The Court will not, in the same proceeding, make an order continuing a winding-up under supervision and removing or appointing liquidators. The latter should be by summons in chambers, subsequent to the former order. — In re Federal Hat Co., 13 V. L. R. 88. The fact that liquidators have claims adverse to the company is good ground for removal. — Ibid. Misconduct on their part need not be shown. The fact that another person will act gratuitously may be sufficient reason for removing a liquidator who receives compensation. — In re Mutual L. S. Co., 12 V. L. R. 777.

Directors not to be liquidators. 187. Upon the voluntary winding-up of a company which cannot by reason of its liabilities continue its business and whether the winding-up began before or after the commencement of this Act no person who at any time within the twenty-four months preceding such winding-up has been a director or manager or promoter of such company shall be eligible to be appointed or shall act as a liquidator for the purpose of winding-up the affairs of the company, unless so determined by a resolution carried by a majority of the creditors in number and value at a meeting convened by the manager of the company of which seven days' notice has been given to every creditor stating the object of the meeting: Provided that nothing in this section shall affect any appointment made before the commencement of this Act.

Notice by liquidator of his appointment. 188. 1. The liquidator in a voluntary winding-up shall within twenty-one days after his appointment file with the Registrar-General a notice of his appointment in the form prescribed by the rules. 2. If the liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding five pounds for every day during which the default continues. — E. § 187.

Rights of creditors in a voluntary winding-up. 189. 1. Every liquidator appointed by a company in a voluntary winding-up shall within seven days from his appointment send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date not being less than fourteen nor more than twenty-one days after his appointment and at a place and hour to be specified in the notice, and shall also advertise notice of the meeting once in the *Government Gazette* and once at least in two local newspapers circulating in the district where the registered office or principal place of business of the company was situate. 2. At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether an application shall be made to the Court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company or for the appointment of a committee of inspection, and if the creditors so resolve an application may be made accordingly to the Court at any time not later than fourteen days after the date of the meeting by any creditor appointed for the purpose at the meeting. 3. On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company or for the appointment of a committee of inspection either together with or without such appointment of a liquidator or such other order as having regard to the interests of the creditors and contributories of the company may seem just. 4. No appeal shall lie from any order of the Court upon an application under this section. 5. The Court shall make such order as to the costs of the application as it may think fit, and if it is of opinion that having regard to the interests of the creditors in the liquidation there were reasonable grounds for the application may order the costs of the application to be paid out of the assets of the company notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant. — E. § 188. A compulsory winding-up not ordered where liquidators

failed to call a meeting within a year, but gave satisfactory reasons. — In re Australian, etc., Ins. Co., 2 B. C. (N. S. W.) 70. — See f. (No. 1482) § 130, *infra*. — The expression "due cause" is to be measured by the real and substantial interests of all parties affected by the liquidation. — In re Royal Standard Investment Co., 15 V. L. R. 822; 11 A. L. T. 112; In re Federal Bank of Australia 20 V. L. R. 199; 15 A. L. T. 238. — Within the period of three months a creditor or contributory may obtain an injunction restraining the winding-up. — Birch & Co. v. Patent Cork Asphalt Co., 20 V. L. R. 471; 16 A. L. T. 132; reversed on appeal, 21 V. L. R. 268; 16 A. L. T. 209. For a case where the Court declined to interfere, see In re Royal Land Co., 17 V. L. R. 510; 13 A. L. T. 85.

Power to fill vacancy in office of liquidator. 190. 1. If a vacancy occurs by death, resignation, or otherwise in the office of liquidator appointed by the company in a voluntary winding-up the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy. 2. For that purpose a general meeting may be convened by any contributory or if there were more liquidators than one by the continuing liquidators. 3. The meeting shall be held in manner prescribed by the articles or in such manner as may on application by any contributory or by the continuing liquidators be determined by the Court. — E. § 180.

Delegation of authority to appoint liquidators. 191. 1. A company about to be or in course of being wound up voluntarily may by extraordinary resolution delegate to its creditors or to any committee of them the power of appointing liquidators or any of them and of supplying vacancies among the liquidators or enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised. 2. Any act done by creditors in pursuance of any such delegated power shall have the same effect as if it had been done by the company. — E. § 190.

Arrangement when binding on creditors. 192. 1. Any arrangement entered into between a company about to be or in the course of being wound up voluntarily and its creditors shall subject to any right of appeal under this section be binding on the company if sanctioned by an extraordinary resolution and on the creditors if acceded to by three-fourths in number and value of the creditors. 2. Any creditor or contributory may within three weeks from the completion of the arrangement appeal to the Court against it, and the Court may thereupon as it thinks just amend, vary, or confirm the arrangement. — E. § 191.

Power of liquidator to accept shares, etc., as consideration for sale of property of company. 193. 1. Where a company is proposed to be or is in course of being wound up altogether voluntarily and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company) the liquidator of the first-mentioned company (in this section called the transferor company) may with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement receive in compensation or part compensation for the transfer or sale shares, policies, or other like interests in the transferee company for distribution among the members of the transferor company or may enter into any other arrangement whereby the members of the transferor company may in lieu of receiving cash, shares, policies, or other like interests or in addition thereto participate in the profits of or receive any other benefit from the transferee company. 2. Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company. 3. If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the confirmation of the resolution he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or by arbitration in manner provided by this section. 4. If the liquidator elects to purchase the member's interest the purchase money must be paid before the company is dissolved and be raised by the liquidator in such manner as may be determined by special resolution. 5. A special resolution shall not be invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding-up the company or for appointing liquidators, but if an order is made within a year for winding-up the company by or subject to the supervision of the Court the special resolution shall not be valid unless sanctioned by the Court. 6. For the purposes of an arbitration under this section the provisions of the Act of the Parliament of the United Kingdom of Great Britain and

Ireland cited as the *Companies Clauses Consolidation Act, 1845*, with respect to the settlement of disputes by arbitration shall be incorporated with this Act, and in the construction of those provisions this Act shall be deemed to be the special Act and "the company" shall mean the transferee company and any appointment by the said incorporated provisions directed to be made under the hand of the secretary or any two of the directors may be made under the hand of the liquidator or if there is more than one liquidator then of any two or more of the liquidators. 7. The transferee company may be a company not formed or registered under or subject to this Act or the Companies Acts. — E. § 192.

Power to apply to Court. 194. 1. Where a company is being wound up voluntarily the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding-up or to exercise as respects the enforcing of calls or any other matter all or any of the powers which the Court might exercise if the company were being wound up by the Court. 2. The Court if satisfied that the determination of the question or the required exercise of power will be just and beneficial may accede wholly or partially to the application on such terms and conditions as the Court thinks fit or may make such other order on the application as the Court thinks just. — E. § 193. As to practice see *In re Ballarat Patent Fuel Co.*, 2 W. W. & a'B. (E.) 172; *In re Belmore Silver, etc., Co.*, 2 V. L. R. (E.) 126; 2 A. J. R. 76; *In re Household Cooperative Supply Co.*, 11 V. L. R. 295; 6 A. L. T. 212; *In re Broken Hill N. S. M. Co.*, 14 V. L. R. 170; *In re Buckley's Swamp Estate Co.*, 18 V. L. R. 664; 14 A. L. T. 150; *In re Crown Investment, etc., Co.*, 20 V. L. R. 19; 15 A. L. T. 70, 186; *In re Starr-Bowkett, etc., Society*, 21 V. L. R. 714; 17 A. L. T. 266; 2 A. L. R. 51; *In re Mount Dundas, etc., Co.*, 26 V. L. R. 197; 6 A. L. R. 134.

Power of liquidator to call general meeting. 195. 1. Where a company is being wound up voluntarily the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purposes he may think fit. 2. In the event of the winding-up continuing for more than one year the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding-up and of each succeeding year or as soon thereafter as may be convenient, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding-up during the preceding year. — E. § 194.

Final meeting and dissolution. Where members fail to attend general meeting preparatory to dissolution. 196. 1. In the case of every voluntary winding-up as soon as the affairs of the company are fully wound up the liquidator shall make up an account of the winding-up showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account and giving any explanation thereof. 2. The meeting shall be called by advertisement in the *Government Gazette* specifying the time, place, and object thereof and published one month at least before the meeting. 3. Within one week after the meeting the liquidator shall file a return with the Registrar-General of the holding of the meeting and of its date, and in default of so doing shall be liable to a fine not exceeding five pounds for every day during which the default continues. 4. The Registrar-General on the filing of the return shall forthwith register it, and on the expiration of three months from the registration of the return the company shall be deemed to be dissolved: Provided that the Court may on the application of the liquidator or of any other person who appears to the Court to be interested make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit. 5. It shall be the duty of the person on whose application an order of the Court under this section is made within seven days after the making of the order to file with the Registrar-General an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues. 6. Where the liquidators of a company which is being wound up voluntarily have convened a general meeting of the company for the purposes of and in accordance with this section and such meeting shall not have been attended by two members the liquidator shall within one week after the meeting file with the Registrar-General a statutory declaration showing that the meeting was duly convened but was not attended as aforesaid, and on the expiration of three months from the date of filing such statutory declaration the company shall be deemed to be dissolved. — E. § 195.

Costs of voluntary liquidation. 197. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company including the remuneration of the liquidator shall be payable out of the assets of the company in priority to all other claims. — E. § 196.

Saving for rights of creditors and contributories. 198. The voluntary winding-up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court if the Court is of opinion in the case of an application by a creditor that the rights of the creditor or in the case of an application by a contributory that the rights of the contributories will be prejudiced by a voluntary winding-up. — E. § 197. Cp. *In re Regent's Park Co.*, 24 V. L. R. 420; 20 A. L. T. 153; 4 A. L. R. 257.

Power of Court to adopt proceedings of voluntary winding-up. 199. Where a company is being wound up voluntarily and an order is made for winding-up by the Court, the Court may if it thinks fit by the same or any subsequent order provide for the adoption of all or any of the proceedings in the voluntary winding-up. — E. § 198.

Winding-up subject to supervision of Court.

Power to order winding-up subject to supervision. 200. When a company has by special or extraordinary resolution resolved to wind up voluntarily the Court may make an order that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just. — E. § 199. For an application of this section, see *In re Mutual, etc., Co.*, 12 V. L. R. 777. The assumption of this control is discretionary with the Court. — *In re Essendon Land, etc., Co.*, 14 A. L. T. 163. A voluntary liquidator, acting in behalf of the company, may petition for a winding-up under supervision. — *In re Maitland C. M. Co.*, 18 V. L. R. 722; 14 A. L. T. 107.

Effect of petition for winding-up subject to supervision. 201. A petition for the continuance of a voluntary winding-up subject to the supervision of the Court, shall for the purpose of giving jurisdiction to the Court over actions be deemed to be a petition for winding-up by the Court. — E. § 200.

Court may have regard to wishes of creditors and contributories. 202. The Court may in deciding between a winding-up by the Court and a winding-up subject to supervision in the appointment of liquidators and in all other matters relating to the winding-up subject to supervision have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence. — E. § 201.

Power for Court to appoint or remove liquidators. 203. 1. Where an order is made for a winding-up subject to supervision the Court may by the same or any subsequent order appoint any additional liquidator. 2. A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company. 3. The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal or by death or resignation. — E. § 202.

Effect of supervision order. 204. 1. Where an order is made for a winding-up subject to supervision the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers without the sanction or intervention of the Court in the same manner as if the company were being wound up altogether voluntarily. 2. A winding-up subject to the supervision of the Court is not a winding-up by the Court for the purpose of the following provisions of this Act, namely, those contained in sections one hundred and fifty, one hundred and fifty-one, except subsections 6, 7, and 8, one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, one hundred and sixty-two, one hundred and sixty-three, one hundred and sixty-four, one hundred and seventy-five, and one hundred and seventy-seven, but subject as aforesaid an order for a winding-up subject to supervision shall for all purposes including the staying of actions and other proceedings, the making and enforcement of calls, and the exercise of all other powers be deemed to be an order for winding-up by the Court. — E. § 203. The Court has power to appoint one of the official liquidators to act conjointly with or in the place of the liquidators already acting. — *In re Federal Bank of Australia*, 20 V. L. R. 199; 15 A. L. T. 238.

Supplemental provisions.

Avoidance of transfers after commencement of winding-up. 205. 1. In the case of voluntary winding-up every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding-up shall be void. 2. In the case of a winding-up by or subject to the supervision of the Court every disposition of the property (including things in action) of the company, and every transfer of shares or alteration in the status of its members, made after the commencement of the winding-up, shall, unless the Court otherwise orders, be void. — E. § 205. See *In re Provincial, etc., Bank*, 5 V. L. R. (E.) 343; 1 A. L. T. 17.

Debts of all descriptions to be proved. 206. In every winding-up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of insolvency) all debts payable on a contingency and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made so far as possible of the value of such debts or claims as may be subject to any contingency or sound only in damages or for some other reason do not bear a certain value. — E. § 206.

Application of insolvency rules in winding-up of insolvent companies. 207. In the winding-up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to estates of persons placed under sequestration, and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding-up and make such claims against the company as they respectively are entitled to by virtue of this section. — E. § 207.

Preferential payments. Wages and salary to be a first charge on the property of the company. 208. 1. In a winding-up there shall be paid in priority to all other debts: a) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the date of the commencement of the winding-up not exceeding fifty pounds; and b) All wages of any workman or labourer in respect of services rendered to the company during four months before the said date; c) In this section the expression "clerk or servant" shall mean and include any clerk, artificer, handicraftsman, miner, journeyman, servant in husbandry, labourer, workman, domestic, or menial servant who, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour. 2. All such wages or salary as aforesaid shall be a first charge upon all the property of the company of whatsoever description notwithstanding such property be mortgaged or charged to secure the payment of any moneys or that there be any lien upon the same. 3. The foregoing debts shall: a) Rank equally among themselves and be paid in full unless the assets are insufficient to meet them in which case they shall abate in equal proportions; and b) So far as the assets of the company available for payment of general creditors are insufficient to meet them have priority over the claims of holders of debentures under any floating charge created by the company and be paid accordingly out of any property comprised in or subject to that charge. 4. Subject to the retention of such sums as may be necessary for the costs and expenses of the winding-up the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them. 5. In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding-up order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof: Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made. 6. The date hereinbefore in this section referred to is: a) In the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily the date of the winding-up order; and b) In any other case the date of the commencement of the voluntary winding-up. — E. § 209. The words "clerk or servant" do not include a manager. — *In re Intercolonial Smelting, etc., Co.*, 13 V. L. R. 896;

9 A. L. T. 76. — A clerk or servant employed in England by an English company registered in Victoria is not entitled to priority under this section. — *In re Australian Cycle and Motor Co.*, 7 A. L. R. (C. N.) 53. For the purpose of ascertaining the period of four months the presentation of the petition to the Court is deemed the commencement of the liquidation. — *In re Australian Producers & Traders*, (1908), V. L. R. 227; 14 A. L. R. 118.

Fraudulent preference. 209. 1. Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property which would if made or done by or against an individual be deemed in his insolvency a fraudulent preference shall if made or done by or against a company be deemed in the event of its being wound up a fraudulent preference of its creditors and be invalid accordingly. 2. For the purposes of this section the presentation of a petition for winding-up a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily and a resolution for voluntary winding-up in any other case shall be deemed to correspond with the order for sequestration in the case of an individual. 3. Any conveyance or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void to all intents. — E. § 210.

Avoidance of certain attachments, executions, etc. 210. Where any company is being wound up by or subject to the supervision of the Court any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up shall be void to all intents. — E. § 211. The Court will not restrain proceedings where the goods seized, although on the premises, do not belong to the company. — *In re Evening Post, etc., Co.*, 20 V. L. R. 335; 16 A. L. T. 66. Stay of execution may be refused. — *Thomas v. General Finance Agency*, 1 A. L. R. 28.

Effect of floating charge. 211. Where a company is being wound up a floating charge on the undertaking or property of the company created within three months of the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of five per centum per annum. — E. § 212.

General scheme of liquidation may be sanctioned. 212. 1. The liquidator may with the sanction following (that is to say:) a) In the case of a winding-up by the Court with the sanction either of the Court or of the committee of inspection; b) In the case of a winding-up subject to supervision with the sanction of the Court; and c) In the case of a voluntary winding-up with the sanction of an extraordinary resolution of the company, do the following things or any of them: i) Pay any classes of creditors in full; ii) Make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable; iii) Compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present and future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding-up of the company on such terms as may be agreed and take any security for the discharge of any such call, debt, liability, or claim and give a complete discharge in respect thereof. 2. In the case of a winding-up by the Court the exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers. — E. § 214. The affidavit of the liquidator should state the reason for his belief that the compromise proposed will be beneficial to the company. — *In re Federal Bank of Australia*, 15 A. L. T. 126. And the agreement as to costs. — *In re Companies Act*, 1890, 20 V. L. R. 243; 16 A. L. T. 1.

Power of Court to assess damages against delinquent directors, etc. 213. Where in the course of winding-up a company it appears that any person who has taken part in the formation or promotion of the company or any past or present director, manager, or liquidator or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company or been guilty of any misfeasance or breach of trust in relation to the company, the Court may on the application of the liquidator or of any creditor or contributory examine into the conduct of the promoter, director, manager, liquidator, or officer and compel him to repay or restore the money or property or any part thereof respectively with

interest at such rate as the Court thinks just or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the Court thinks just. 2. This section shall apply notwithstanding that the offence is one for which the offender may be criminally responsible. — E. § 215.

Penalty for falsification of books. 214. If any director, officer, or contributory of any company being wound up, destroys, mutilates, alters, or falsifies any books, papers, or securities or makes or is privy to the making of any false or fraudulent entry on any register, book of account, or document belonging to the company with intent to defraud or deceive any person he shall be guilty of a misdemeanour and be liable to imprisonment for any term not exceeding two years with or without hard labour. — E. § 216.

Prosecution of delinquent directors, etc. 215. 1. If it appears to the Court in the course of a winding-up by or subject to the supervision of the Court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible the Court may on the application of any person interested in the winding-up or of its own motion direct the liquidator to prosecute for the offence and may order the costs and expenses to be paid out of the assets of the company. 2. If it appears to the liquidator in the course of a voluntary winding-up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible the liquidator with the previous sanction of the Court may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities. — E. § 217.

Penalty on perjury. 216. If any person on examination on oath authorized under this Act or in any affidavit or deposition in or about the winding-up of any company or otherwise in or about any matter arising under this Act wilfully and corruptly gives false evidence he shall be liable to the penalties for wilful perjury. — E. § 218.

Meetings to ascertain wishes of creditors or contributories. 217. 1. Where by this Act the Court is authorized in relation to winding-up to have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence the Court may if it thinks fit for the purpose of ascertaining those wishes direct meetings of the creditors or contributories to be called, held, and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court. 2. In the case of creditors regard shall be had to the value of each creditor's debt. 3. In the case of contributories regard shall be had to the number of votes conferred on each contributory by the articles. — E. § 219.

Books of company to be evidence. 218. Where any company is being wound up all books and papers of the company and of the liquidators shall as between the contributories of the company be *prima facie* evidence of the truth of all matters purporting to be therein recorded. — E. § 220.

Inspection of books. 219. After an order for a winding-up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its books and papers as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise. — E. § 221.

Disposal of books and papers of company. 220. 1. When a company has been wound up and is about to be dissolved the books and papers of the company and of the liquidator shall, unless the Court or a Judge thereof shall otherwise order, so soon as the liquidator does not require their further use, be deposited by him with the Registrar-General who after retaining the same for five years from the date of the dissolution of the company may destroy the same. 2. After five years from the dissolution of the company no responsibility shall rest on the company or the liquidators or any person to whom the custody of the books and papers has been committed by reason of the same not being forthcoming to any person claiming to be interested therein. — E. § 222.

Power of Court to declare dissolution of company void. 221. 1. Where a company has been dissolved the Court may at any time within two years of the date of the

dissolution on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested make an order upon such terms as the Court thinks fit declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved. 2. It shall be the duty of the person on whose application the order was made within seven days after the making of the order to file with the Registrar-General an office copy of the order, and if that person fails so to do he shall be liable to a fine not exceeding five pounds for every day during which the default continues. — E. § 223.

Information as to pending liquidations. Treasurer may pay lawful claimant. Treasurer not responsible for payments in certain cases. 222. Where the winding-up of a company is not concluded within one year after its commencement the liquidator shall at such intervals as may be prescribed until the winding-up is concluded file with the Registrar-General a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. 2. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times on payment of the prescribed fee to inspect the statement, and to receive a copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of court and shall be punishable accordingly on the application of the liquidator. 3. If a liquidator fails to comply with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues. 4. If it appears from any such statement or otherwise that a liquidator has in his hands or under his control any money representing unclaimed assets of the company which has remained unclaimed for twelve months after the date of its becoming payable the liquidator shall forthwith pay the same to the Receiver of Revenue in Melbourne to be placed to the credit of an account to be called the "Companies Liquidation Account" and shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof. 5. For the purpose of ascertaining and getting in any money payable in pursuance of this section the Court may at any time order such liquidator to submit to it an account verified by affidavit of the sums received and paid by him as such liquidator and may direct and enforce an audit of the account. 6. The Governor in Council may direct that the whole or part of the moneys paid to the credit of the said account shall be invested in the purchase of Government debentures or stock or otherwise and what percentage of the interest arising from such investment shall be paid into the Consolidated Revenue to recoup any necessary expenses. 7. If any claimant shall make any demand against the Treasurer for any money paid to the Receiver of Revenue in Melbourne and placed to the credit of the Companies Liquidation Account the Treasurer upon being satisfied that the claimant is the owner of the money demanded by him shall order and direct payment thereof to be made to him out of the said account. 8. Where any unclaimed moneys paid to any claimant are afterwards claimed by any other person the Treasurer shall not be responsible for the payment of the same, but such person may have recourse against the claimant to whom the Treasurer has paid the unclaimed moneys. — E. § 224. The provisions of subsection (1) apply to companies in voluntary liquidation as well as to those in compulsory liquidation. — *In re Mercantile Finance, etc.*, Co., 25 V. L. R. 285; 21 A. L. T. 109; 5 A. L. R. 259.

Judicial notice of signature of officers. 223. In all proceedings under this Part of this Act all Courts, Judges and persons judicially acting and all officers judicial or ministerial of any Court or employed in enforcing the process of any Court shall take judicial notice of the signature of any officer of the Court and also of the official seal or stamp of the Court appended to or impressed on any document made, issued, or signed under the provisions of this Part of this Act or any official copy thereof. — E. § 225.

Special commission for receiving evidence. Commissioners to take evidence in open Court. 224. The Judges of the Court of Insolvency and the Judges of the County Courts shall be commissioners for the purpose of taking evidence under this Act, and the Court may refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner. 2. Every commissioner shall in addition to any powers which he might lawfully exercise as a Judge of the Court of Insolvency or a Judge of a County Court have in the matter so referred to

him all the same powers of summoning and examining witnesses of requiring the production or delivery of documents of punishing defaults by witnesses and of allowing costs and expenses to witnesses as the Court which made the winding-up order. 3. The examination so taken shall be returned or reported to the Court which made the order in such manner as that Court directs. 4. Unless otherwise ordered by the Court all evidence taken by commissioners pursuant to this section shall be so taken as in open Court and shall be open to the public. — E. § 226. The Court may order the examination of witnesses to be public, subject to the discretion of the commissioner. — *In re City of Melbourne Bank*, 2 A. L. R. 65.

Affidavits before whom to be sworn. 225. Any affidavit required to be sworn under the provisions or for the purposes of this Part of this Act may be sworn in the State of Victoria or elsewhere within the dominions of His Majesty before any Court, Judge, or person lawfully authorized to take and receive affidavits or before any of His Majesty's consuls or vice consuls in any place outside His Majesty's dominions. 2. All Courts, Judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit or to any other document to be used for the purposes of this Part of this Act. — E. § 228.

Investment or surplus funds on general account. 226. 1. Whenever the cash balance standing to the credit of any company in liquidation is in excess of the amount which in the opinion of the Court or the committee of inspection is required for the time being to answer demands in respect of the estate of the company the Court or the committee of inspection may direct the liquidator to invest the said sums or any part thereof in Government securities or place the same on deposit at interest with any bank. 2. Whenever any part of the money so invested is in the opinion of the Court or committee of inspection required to answer any demands in respect of the company's estate the Court or committee of inspection may direct the sale or realization of such part of the said securities as may be necessary. — E. § 230.

Returns by officers. 227. The officers of the Courts acting in the winding-up of companies shall make to the Attorney-General such returns of the business of their respective Courts and offices at such times and in such manner and form as may be prescribed and the Attorney-General shall cause such returns or a copy thereof to be laid before both Houses of Parliament. — E. § 235.

Rules and fees.

Rules of proceeding in Court. Power to enforce orders and rules. 228. 1. The proceedings for winding-up a company by the Court or subject to the supervision of the Court shall be conducted in the manner and subject to the rules now in force or as near thereto as circumstances admit, and the Judges of the Court or the Chief Justice and any two other Judges may as often as circumstances require annul, modify, or add to the said rules, and may make new rules in lieu thereof or in addition thereto, and may also make rules with respect to the procedure for reduction of capital and for specifying the amount of fees to be paid in respect of proceedings taken under this Part of this Act for reducing capital and for winding-up a company by the Court. 2. All rules made in pursuance of this section shall have the same effect and be subject to the same conditions as if they were rules of the Court made under any Act now or hereafter in force enabling the Court or the Judges thereof to make rules. — E. § 237.

Power to make rules of procedure. 229. 1. Subject to the provisions of this Act with respect to rules and fees relating to the reduction of capital and the winding-up of companies, rules of procedure for the purposes of this Act including rules as to costs and fees may be made by the authority having power to make rules for the Court. 2. The authority having power to make rules under this section may by any such rules repeal, alter, or amend any rules made by the like authority under the Companies Acts or any Act amending the same which are in force at the commencement of this Act. — E. § 238.

Defunct companies.

Registrar-General may strike defunct company off register. 230. 1. Where the Registrar-General has reasonable cause to believe that a company is not carrying on business or in operation he shall send to the company by post a letter inquiring

whether the company is carrying on business or in operation. 2. If the Registrar-General does not within one month of sending the letter receive any answer thereto he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter and stating that no answer thereto has been received and that if an answer is not received to the second letter within one month from the date thereof a notice will be published in the *Government Gazette* with a view to striking the name of the company off the register. 3. If the Registrar-General either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the *Government Gazette* and send to the company by post a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved. 4. If in any case where a company is being wound up the Registrar-General has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Registrar-General demanding the returns has been sent by post to the company or to the liquidator at his last known place of business the Registrar-General may publish in the *Government Gazette* and send to the company a like notice as is provided in the last preceding subsection. 5. At the expiration of the time mentioned in the notice the Registrar-General may unless cause to the contrary is previously shown by the company strike its name off the register, and shall publish notice thereof in the *Government Gazette*, and on the publication in the *Government Gazette* of this notice the company shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved. 6. If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on the application of the company or member or creditor may, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off. 7. A letter or notice under this section may be addressed to the company at its registered office, or if no office has been registered to the care of some director or officer of the company, or if there is no director or officer whose name and address are known to the Registrar-General may be sent to each of the persons who subscribed the memorandum addressed to him at the address mentioned in the memorandum. E. § 242.

Registrar-General to act as representative of defunct company in certain events.

How deeds and instruments to be executed by Registrar-General. 231. 1. Where after a company has been dissolved it is proved to the satisfaction of the Commissioner of Titles that the company if still existing would be legally or equitably bound to carry out, complete, or give effect to some dealing, transaction, or matter, and that in order to carry out, complete, or give effect to the same some purely ministerial, administrative, or mechanical act (not discretionary) should have been done by or on behalf of the company, or should be done by or on behalf of the company if still existing, including the withdrawal of a caveat, the giving or executing a discharge for a satisfied mortgage, a surrender of a lease determined otherwise than by effluxion of time, a grant or surrender of easement, a transfer or instrument under the *Transfer of Land Act, 1890*, a conveyance, assignment, receipt, or any deed or document of any description whatever where the withdrawal, giving, or executing the same would not have been a matter of option or discretion on the part of the company, it shall be lawful for the Commissioner to direct the Registrar-General as representing the company or its liquidator under the provisions of this section to do or cause to be done any such act as aforesaid as the Commissioner thinks the case so proved may require. 2. The Registrar-General shall execute or sign any deed, instrument, or document in pursuance of the provisions of this section by signing his name in his official capacity in the place where the company would or should have executed or signed, adding a memorandum stating that he has done so in pursuance of this

section of this Act, and shall also affix his official seal (if any), and such execution or signature shall have the same force, validity, and effect as if the company if existing had duly executed such deed, instrument, or document.

Outstanding assets of defunct company to vest in Registrar-General. 232. Where after a company has been dissolved there remains any outstanding property, real or personal, which was vested in the company or to which it was entitled or over which it had a disposing power at the time it was so dissolved, but which was not got in, realized upon or otherwise disposed of or dealt with by the company or its liquidator, such property, except called and uncalled capital, shall for the purposes hereafter mentioned, notwithstanding any statute or rule of law to the contrary, be deemed to be vested in the Registrar-General for all the estate and interest therein, legal or equitable, of the company or its liquidator at the date the company was dissolved, together with all claims, rights, and remedies which the company or its liquidator then had in respect thereof.

Outstanding realty, how disposed of. Proceeds of realization, how dealt with. Limitation of actions. 233. 1. Upon it being proved to the satisfaction of the Commissioner of Titles that there is vested in the Registrar-General by operation of the last preceding section any land, messuage, tenement, or hereditament, corporeal or incorporeal, whether of freehold, leasehold, or any other tenure whatever, and whether solely or together with any other person wherein the estate or interest of the company is a beneficial estate or interest and not merely held in trust, it shall be lawful for the Commissioner to authorize such Registrar-General to sell or otherwise dispose of or deal with the same or with any part thereof or with any estate or interest therein as to the Commissioner shall seem expedient; and thereupon, or at any time thereafter it shall be lawful for the Registrar-General to sell or otherwise dispose of or deal with the same either solely or in concurrence with any other person, in such manner, for such price or other consideration, valuable or otherwise, by public auction or private contract, upon such terms and conditions as the Registrar-General shall think fit, with power to rescind any contract entered into for that purpose, and resell or otherwise dispose of or deal with such property as he shall think expedient or the circumstances of the case require with power if the sale be by public auction to fix a reserve or to sell without a reserve or to buy in as he shall think fit. And for the purpose of effecting any such realization, disposition, or dealings such Registrar-General may make, execute, sign, and give such contracts, transfers, conveyances, assignments, receipts, discharges, deeds, and documents as he shall think necessary or proper. 2. The moneys received by the Registrar-General in the exercise of any of the powers conferred on him by this Act shall in the first place be applied in defraying all costs and expenses incident thereto and thereafter to any payment authorized by this Act and the surplus (if any) shall be deemed to be trust moneys in his hands within the meaning and operation of section fifty-five of the *Trusts Act, 1890*, and he shall pay the same with the privity of the Master-in-Equity into the Savings Bank in the City of Melbourne to the credit of an account entitled in the name of the company with the word "Defunct" added thereto in trust to attend the orders of the Supreme Court; and thereafter such moneys shall be subject to the provisions of section fifty-six of the *Trusts Act, 1890*, so far as the same are applicable. But any petition presented under the said section, and any claim, suit, or action for or in respect of any such moneys must be presented, made, or instituted within six years next after the company being dissolved, after the expiration of which period of time all moneys then or at any time thereafter standing to the credit of the account of the company in the said bank shall if there be no such petition, claim, suit, or action pending or any order of the Supreme Court to the contrary be passed to the credit and form part of the Consolidated Revenue.

Outstanding chattels, how disposed of. 234. All chattels (other than chattels real) and any estate or interest in such chattels vested in the Registrar-General by operation of this Act to which the company was beneficially entitled at the date it was dissolved may be got in, sold, or otherwise disposed of or dealt with by him without the authorization of the Commissioner of Titles; and the Registrar-General shall as to any such chattel, estate, or interest and the sale or disposition thereof or dealing therewith, and the giving effect thereto have all the discretionary and other powers which are conferred on him by the last preceding section with regard to realty; and all moneys coming to his hands in respect thereof shall be dealt with in the same way as prescribed by that section as to moneys derived from realty.

Liability of Registrar-General and Crown as to property vested in Registrar-General by this Act restricted to amount of assets in his hands. 235. Property deemed to be vested in the Registrar-General by operation of this Act shall be liable and subject to all charges, claims, and liabilities imposed thereon or affecting such property by reason of any statutory provision as to rates, taxes, drainage, fencing, destruction of vermin or thistles or any other matter or thing to which such property would have been liable or subject had such property continued in the possession, ownership, or occupation of the company: Provided nevertheless that the fact of the property being so deemed to be vested in the Registrar-General shall not nor shall any such statutory provision impose on the Registrar-General or the Crown any duty, obligation, or liability whatsoever to do or suffer any act or thing required by any such statutory provision to be done or suffered by the owner or occupier for the time being of such property beyond or other than the satisfaction or payment of any such charges, claims, or liabilities out of the assets of such company so far as the same are in the opinion of the Registrar-General properly available for and applicable to such payment.

Registrar-General to keep accounts of assets which shall be open to inspection by Auditor-General. 236. The Registrar-General shall record in the register of companies kept by him upon the folio of the company a statement of any property coming to his hand or under his control or to his knowledge vested in him by operation of this Act and of his dealings therewith, and shall keep full and accurate accounts of all moneys arising therefrom and of how the same have been disposed of, and shall also keep all accounts, vouchers, receipts, and papers relating to such property and moneys respectively, and the same shall be subject to inspection by the Auditor-General, who shall have all the powers in respect of such accounts as are or may be conferred upon him by any Act relating to the collection and audit of public moneys and accounts now or hereafter in force, and the Auditor-General may from time to time refer the whole or any part of the accounts of any such company's estate to the Master-in-Equity or to the Prothonotary of the Court, who are hereby respectively authorized and required to examine and report upon the same for the information of such Auditor-General.

Registrar-General to publish half-yearly statements of assets coming to his hands. 237. 1. The Registrar-General shall in the last week in June and the last week in December in each year publish in the *Government Gazette* and in some newspaper published in Melbourne a statement showing the amounts paid by him during the preceding half-year into the Savings Bank in the City of Melbourne under the provisions of this Act and the particular companies out of whose estates it has been derived, and such further particulars as may be deemed expedient. 2. In this and the next seven immediately preceding sections the word "company" shall include society.

Part V. Registrar-General's Office and Fees.

Registrar-General's office. 238. 1. Any person may inspect the documents kept by the Registrar-General relating to companies under this Act on payment of such fees as may be appointed by the Governor in Council, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company or other certificate issued under this Act or a copy or extract of any other document or any part of any other document to be certified by the Registrar-General on payment for the certificate, certified copy, or extract of such fees as the Governor in Council may appoint not exceeding five shillings for a certificate of incorporation or other certificate, and not exceeding sixpence for each folio of one hundred words of a certified copy or extract. 2. A copy of or extract from any document kept, recorded, filed, or registered at the office of the Registrar-General certified to be a true copy under the hand of the Registrar-General or a deputy Registrar-General (whose official position it shall not be necessary to prove) shall in all legal proceedings be admissible in evidence as of equal validity with the original document. — E. § 243.

Fees. 239. There shall be paid to the Registrar-General in respect of the several matters mentioned in Table B. in the first Schedule to this Act the several fees therein specified or such smaller fees as the Governor in Council may from time to time direct. — E. § 244.

Part VI. Application of Act to Companies formed and registered under former Companies Acts.

Application of Act to companies formed under former Companies Acts. 240.

This Act shall apply to existing companies in the same manner in the case of a limited company other than a company limited by guarantee as if the company had been formed and registered under this Act as a company limited by shares; in the case of a company limited by guarantee as if the company had been formed and registered under this Act as a company limited by guarantee; and in the case of any other company as if the company had been formed and registered under this Act as an unlimited company: Provided that reference express or implied to the date of registration shall be construed as a reference to the date at which the company was registered under the Companies Acts. — E. § 245.

Application of Act to companies registered under former Companies Acts. 241.

This Act shall apply to every company registered but not formed under the Companies Acts in the same manner as it is hereinafter in this Act declared to apply to companies registered but not formed under this Act. Provided that reference express or implied to the date of registration shall be construed as a reference to the date at which the company was registered under the Companies Acts. — E. § 246.

Mode of transferring shares. 242. A company registered but not formed under the Companies Acts may cause its shares to be transferred in manner hitherto in use or in such other manner as the company may direct. — E. § 248.

Part VII. Companies authorized to register under this Act.

Companies capable of being registered. 243. 1. With the exceptions and subject

to the provisions mentioned and contained in this section: i) Any company consisting of five or more members which was in existence on the first day of August, One thousand eight hundred and ninety; and ii) Any company formed after the date aforesaid whether before or after the commencement of this Act in pursuance of any Act of Parliament other than this Act or of letters patent or being otherwise duly constituted according to law and consisting of five or more members, may at any time register under this Act as an unlimited company, or as a company limited by shares or as a company limited by guarantee; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound-up.

2. Provided as follows: a) A company having the liability of its members limited by Act of Parliament or letters patent and not being a joint stock company as hereinafter defined shall not register in pursuance of this section; b) A company having the liability of its members limited by Act of Parliament or letters patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee; c) A company that is not a joint stock company as hereinafter defined shall not register in pursuance of this section as a company limited by shares; d) A company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the regulations of the company) at a general meeting summoned for the purpose; e) Where a company not having the liability of its members limited by Act of Parliament or letters patent is about to register as a limited company the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting; f) Where a company is about to register as a company limited by guarantee the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before he ceased to be a member and of the costs and expenses of winding-up and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount. 3. In computing any majority under this section when a poll is demanded regard shall be had to the number of votes to which each member is entitled according to the regulations of the company. 4. A company registered under the Companies Acts shall not be registered in pursuance of this section. — E. § 249.

Definition of joint stock company. 244. For the purposes of this Part of this Act as far as relates to registration of companies as companies limited by shares a joint stock company means a company having a permanent paid-up or nominal

share capital of fixed amount divided into shares also of fixed amount or held and transferable as stock or divided and held partly in one way and partly in the other and formed on the principle of having for its members the holders of those shares or that stock and no other persons, and such a company when registered with limited liability under this Act shall be deemed to be a company limited by shares. — E. § 250.

Liability of bank of issue unlimited in respect of notes. 245. 1. A bank of issue registered under this Act as a limited company shall not be entitled to limited liability in respect of its notes, and the members thereof shall be liable in respect of its notes in the same manner as if it had been registered as unlimited, but if in the event of the company being wound up the general assets are insufficient to satisfy the claims of both the note-holders and the general creditors then the members after satisfying the remaining demands of the note-holders shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets. 2. For the purposes of this section the expression "the general assets" means the funds available for payment of the general creditor as well as the note-holder. 3. Any bank of issue registered under this Act as a limited company may state on its notes that the limited liability does not extend to its notes and that the members of the company are liable in respect of its notes in the same manner as if it had been registered as an unlimited company. — E. § 251.

Requirements for registration of joint stock companies. 246. Before the registration in pursuance of this Part of this Act of a joint stock company there shall be delivered to the Registrar-General the following documents (that is to say): 1. A list showing the names, addresses, and occupations of all persons who on a day named in the list not being more than six clear days before the day of registration were members of the company with the addition of the shares or stock held by them respectively distinguishing in cases where the shares are numbered each share by its number; 2. A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the company; and 3. If the company is intended to be registered as a limited company a statement specifying the following particulars (that is to say): a) The nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists; b) The number of shares taken and the amount paid on each share; c) The name of the company with the addition of the word "limited" as the last word thereof; and d) In the case of a company intended to be registered as a company limited by guarantee the resolution declaring the amount of the guarantee. — E. § 252.

Requirements for registration by other than joint stock companies. 247. Before the registration in pursuance of this Part of this Act of any company not being a joint stock company there shall be delivered to the Registrar-General: 1. A list showing the names, addresses, and occupations of the directors or other managers (if any) of the company; and 2. A copy of any Act of Parliament, letters patent, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the company; and 3. In the case of a company intended to be registered as a company limited by guarantee a copy of the resolution declaring the amount of the guarantee. — E. § 253.

Authentication of statements. 248. The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar-General shall be verified by a statutory declaration of any two or more directors or other principal officers of the company. — E. § 254.

Registrar-General may require evidence as to nature of company. 249. The Registrar-General may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint stock company as hereinbefore defined. — E. § 255.

On registration of banking company with limited liability notice to be given to customers. 250. 1. Where a banking company which was in existence on the tenth day of July, One thousand eight hundred and ninety, proposes to register as a limited company it shall at least thirty days before so registering give notice of its intention so to register to every person who has a banking account with the company either by delivery of the notice to him or by posting it to him at or delivering it at his last known address. 2. If the company omits to give the notice required by this section then as between the company and the person for the time being interested in the

account in respect of which the notice ought to have been given and so far as respects the account down to the time at which notice is given but not further or otherwise the certificate of registration with limited liability shall have no operation. — E. § 256.

Exemption of certain companies from payment of fees. 251. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of a company if it is not registered as a limited company or if before its registration as a limited company the liability of the shareholders was limited by some other Act of the Parliament of Victoria or by letters patent. — E. § 257.

Addition of "limited" to name. 252. When a company registers in pursuance of this Part of this Act with limited liability the word "limited" shall form and be registered as part of its name. — E. § 258.

Certificate of registration. 253. On compliance with the requirements of this Part of this Act with respect to registration and on payment of such fees, if any, as are payable under Table B in the first Schedule to this Act, the Registrar-General shall certify under his hand that the company applying for registration is incorporated as a company under this Act and in the case of a limited company that it is limited and thereupon the company shall be incorporated and shall have perpetual succession and a common seal with power to hold lands. — E. § 259. A notice in the *Gazette* that a company is registered under the Act is not sufficient. A date must be specified. The notice may be given a retrospective effect. — *In re Melbourne, etc., Co.*, 2 W. W. & a'B. (E.) 127.

Vesting of property on registration. 254. All property, real and personal (including things in action), belonging to or vested in a company at the date of its registration in pursuance of this Part of this Act shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein. — E. § 260.

Saving for existing liabilities. 255. Registration of a company in pursuance of this Part of this Act shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into by, to, with, or on behalf of the company before registration. — E. § 261.

Continuation of existing actions. 256. All actions and other legal proceedings which at the time of the registration of a company in pursuance of this Part of this Act are pending by or against the company or the public officer or any member thereof may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any judgment, decree, or order obtained in any such action or proceeding; but in the event of the property and effects of the company being insufficient to satisfy the judgment, decree, or order an order may be obtained for winding-up the company. — E. § 262.

Effect of registration under Act. 257. When a company is registered in pursuance of this Part of this Act: i) All provisions contained in any Act of Parliament, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company including in the case of a company registered as a company limited by guarantee the resolution declaring the amount of the guarantee shall be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if so much thereof as would if the company had been formed under this Act have been required to be inserted in the memorandum were contained in a registered memorandum and the residue thereof were contained in registered articles; ii) All the provisions of this Act shall apply to the company and the members, contributories, and creditors thereof in the same manner in all respects as if it had been formed under this Act subject as follows (that is to say): a) The regulations in Table A in the first Schedule to this Act shall not apply unless adopted by special resolution; b) The provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered; c) Subject to the provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company; d) Subject to the provisions of this section the company shall not have power without the sanction of the Governor in Council to alter any provision contained in any letters patent relating to the company; e) The company shall not have power to alter any provision contained in a royal charter or letters patent with respect to the objects of the company; f) In the event of the company being wound up

every person shall be a contributory in respect of the debts and liabilities of the company contracted before registration who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs and expenses of winding-up the company so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories and to the assignees and trustees of insolvent contributories respectively shall apply; iii) The provisions of this Act with respect to: a) The registration of an unlimited company as limited; b) The powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding-up; c) The power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding-up; shall apply notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company; iv) Nothing in this section shall authorize the company to alter any such provisions contained in any deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company as would if the company had originally been formed under this Act have been required to be contained in the memorandum and are not authorized to be altered by this Act; v) Nothing in this Act shall derogate from any power of altering its constitution or regulations which may by virtue of any Act of Parliament, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company be vested in the company. — E. § 263.

Power to substitute memorandum and articles for deed of settlement. 258. 1. Subject to the provisions of this section a company registered in pursuance of this Part of this Act may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement. 2. The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall so far as applicable apply to an alteration under this section with the following modifications: a) There shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar-General a printed copy of the substituted memorandum and articles; and b) On the registration of the alteration being certified by the Registrar the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles and the company's deed of settlement shall cease to apply to the company. 3. An alteration under this section may be made either with or without any alteration of the objects of the company under this Act. 4. In this section the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company not being an Act of Parliament, a royal charter, or letters patent. — E. § 264.

Power of Court to stay or restrain proceedings. 259. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall in the case of a company registered in pursuance of this Part of this Act where the application to stay or restrain is by a creditor, extend to actions and proceedings against any contributory of the company. — E. § 265.

Actions stayed on winding-up order. 260. Where an order has been made for winding-up a company registered in pursuance of this Part of this Act no action or proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company except by leave of the Court and subject to such terms as the Court may impose. — E. § 266.

Power to banking companies to register as under this Part of this Act by passing a special resolution and memorandum and articles of association. Contents of memorandum of association. Contents of articles of association. Resolution memorandum and articles to be delivered to the Registrar-General. Portion of this Part inapplicable.

Regulations and identity of the company after registration. 261. Any banking company incorporated by any Act of the Parliament of Victoria specially relating to such company in force at the time of the passing of *The Banking Companies Registration Act, 1888*, may register as under this Part of this Act without altering the liability of its members in manner and subject to the conditions hereinafter appearing: i) The company desiring so to register must pass a special resolution authorizing such registration and adopting a memorandum and articles of association for that purpose; ii) Such memorandum of association shall contain such of the provisions of the existing regulations of the company whether contained in any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnery, or other instrument as relate to the matters hereinafter set forth with such alterations only (if any) as might have been made in such provisions under the powers contained in this Part of this Act if they had been contained in the memorandum of association of a company registered under the said Part (that is to say): a) The name of the company with (if the company is limited) the addition of the word "limited" as the last word in such name; b) The objects for which the company is established; c) (If such is the case) a declaration that the liability of the members is limited; d) In case of a company limited by shares the amount of the capital of the company and the amount of the shares into which it is divided; or in case of a company limited by guarantee a declaration of the amount each member undertakes to contribute should the same be required to the assets of the company in the event of the same being wound up during the time he is a member or within one year afterwards for the payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member and of the costs, charges, and expenses of winding-up the company and for the adjustment of the rights of the contributories among themselves; iii) The articles of association shall contain any provisions which may be contained in the articles of association of a company under this Part of this Act; iv) A copy of such special resolution and such memorandum and articles of association shall be delivered to the Registrar-General in lieu of the copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnery, or other instrument constituting or regulating the company required by this Part of this Act; v) Sections two hundred and forty-three and two hundred and forty-five and articles c and d of subdivision ii of section two hundred and fifty-seven of this Act and so much of the said section two hundred and fifty-seven as provides that all provisions contained in any Act of Parliament, deed of settlement, letters patent, or other instrument constituting or regulating the company shall be deemed to be conditions and regulations of the company shall not apply to a company registering under the provisions contained under this and the next succeeding section; vi) After the registration of any such banking company as aforesaid the memorandum and articles of association of such company filed with the Registrar-General shall form the regulations of the company to the exclusion of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnery, or other instrument previously constituting or regulating such company but such company shall be deemed to be the same corporation after such registration as it was before.

Effect of error in memorandum of association. 262. If the memorandum of association of any company registered under the powers contained in this and the last preceding section should not be in conformity with the provisions of such sections the registration of the company shall not be void in consequence, but the Supreme Court on the application of any person interested who has not assented thereto made within twelve months after such registration may rectify such memorandum of association and give such other relief as may be necessary to redress any injury that may have been sustained by such person by reason of such memorandum of association not being in conformity with the provisions of such sections.

Part VIII. Winding-up of unregistered Companies.

Meaning of unregistered company. 263. For the purposes of this Part of this Act the expression "unregistered company" shall not include a company registered under the Companies Acts or under this Act, but save as aforesaid shall include any partnership, association, or company consisting of more than five members. — E. § 267.

Winding-up of unregistered companies. 264. 1. Subject to the provisions of this Part of this Act any unregistered company may be wound up under this Act

and all the provisions of this Act with respect to winding-up shall apply to an unregistered company with the following exceptions and additions: i) The principal place of business of such company in the state of Victoria shall for all the purposes of the winding-up be deemed to be the registered office of the company; ii) No unregistered company shall be wound up under this Act voluntarily or subject to supervision; iii) The circumstances in which an unregistered company may be wound up are as follows (that is to say): a) If the company is dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding-up its affairs; b) If the company is unable to pay its debts; c) If the Court is of opinion that it is just and equitable that the company should be wound up; iv) An unregistered company shall for the purposes of this Act be deemed to be unable to pay its debts: a) If a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding fifty pounds then due has served on the company by leaving at its principal place of business in the State of Victoria or by delivering to the secretary or some director, manager, or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct a demand under his hand requiring the company to pay the sum so due and the company has for three weeks after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor; b) If any action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the company or from him in his character of member and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary or some director, manager, or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct the company has not within ten days after service of the notice paid, secured, or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his reasonable satisfaction against the action or proceeding and against all costs, damages, and expenses to be incurred by him by reason of the same; c) If execution or other process issued on a judgment, decree, or order obtained in any Court in favour of a creditor against the company or any member thereof as such or any person authorized to be sued as nominal defendant on behalf of the company is returned unsatisfied; d) If it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts. 2. Nothing in this Part of this Act shall affect the operation of any enactment which provides for any partnership, association, or company being wound up or being wound up as a company or as an unregistered company under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision (if any) of this Act. — E. § 268. The provisions of this Part do not apply to a railway company incorporated by Act of Parliament. — *In re St. Kilda and Brighton Ry. Co.*, 1 W. W. & a'B. (E.) 157. See also *In re St. Kilda and Brighton Ry. Co.*, 2 W. & W. (I. E. & M.) 69. Nor to a mining company registered under Act No. 228. — *In re Collingwood Q. M. Co.*, 5 W. W. & a'B. (E.) 190. But a foreign company can be wound up even though an order for winding-up has been made at the domicile of the company. — *In re Oriental Bank Corporation*, 10 V. L. R. (E.) 154. And so may a building society. — *In re Premier, etc., Society*, 16 V. L. R. 424; 12 A. L. T. 1. As to application of certain provisions of the *Supreme Court Act, 1890*, see *In re Premier, etc., Society*, 16 V. L. R. 740; 12 A. L. T. 111.

Contributories in winding-up of unregistered company. 265. 1. In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves or to pay or contribute to the payment of the costs and expenses of winding-up the company and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid. 2. In the event of the death or insolvency of any contributory the provisions of this Act with respect to the personal representatives, heirs, and devisees of deceased contributories and to the assignees and trustees of insolvent contributories respectively shall apply. — E. § 269.

Power of Court to stay or restrain proceedings. 266. The provisions of this Act with respect to staying and restraining actions and proceedings against a company at any time after the presentation of a petition for winding-up and before the making of a winding-up order shall in the case of an unregistered company where the applic-

ation to stay or restrain is by a creditor extend to actions and proceedings against any contributory of the company. — E. § 270.

Actions stayed on winding-up order. 267. Where an order has been made for winding-up an unregistered company no action or proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company except by leave of the Court and subject to such terms as the Court may impose. — E. § 271.

Directions as to property in certain cases. 268. If an unregistered company has no power to sue and be sued in a common name or if for any reason it appears expedient the Court may by the winding-up order or by any subsequent order direct that all or any part of the property, real and personal (including things in action), belonging to the company or to trustees on its behalf is to vest in the liquidator by his official name and thereupon the property or the part thereof specified in the order shall vest accordingly; and the liquidator may after giving such indemnity (if any) as the Court may direct bring or defend in his official name any action or other legal proceeding relating to that property or necessary to be brought or defended for the purposes of effectually winding-up the company and recovering its property. — E. § 272.

Provisions of Part of Act cumulative. 269. The provisions of this Part of this Act with respect to unregistered companies shall be in addition to and not in restriction of any provisions hereinbefore in this Act contained with respect to winding-up companies by the Court, and the Court or liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding-up companies formed and registered under this Act; but an unregistered company shall not except in the event of its being wound up be deemed to be a company under this Act and then only to the extent provided by this Part of this Act. — E. § 273.

Part IX. Companies and Societies established outside Victoria.

Requirements as to companies established outside Victoria. 270. 1. Every company or society formed or incorporated outside the State of Victoria which carries on business within the State of Victoria shall within one month after commencing to so carry on the business, or if registered under the *Companies Act, 1896*, shall so far as they have not already done so within twelve months after the passing of this Act, file with the Registrar-General for registration: a) A certified copy of the charter, statutes, or memorandum and articles of the company or society, or other instrument constituting or defining the constitution of the company or society, and if the instrument is not written in the English language a certified translation thereof; b) A list of the directors of the company or society; c) The name and address of some person resident in the State of Victoria authorized to accept on behalf of the company or society service of process, and any notices required to be served on the company or society which person shall be deemed to be the agent of such company for the purposes of this Act; and in the event of any alteration being made in any such instrument or in the directors or in the name or address of any such person as aforesaid the company or society shall within the prescribed time file with the Registrar-General a notice of the alteration. 2. The agent of such company or society shall make and sign a statutory declaration in the form of the second Schedule to this Act or to the like effect before a justice and such declaration when so made and signed shall be filed with the Registrar-General. 3. Any process or notice required to be served on the company or society shall be sufficiently served if addressed to any person whose name has been so filed as aforesaid and left at or sent by post to the address which has been so filed. 4. Every company or society to which this section applies shall at least once in every year and at intervals of not less than fifteen months file with the Registrar-General a true copy signed by such agent of the last general balance-sheet of the company or society prepared prior to such filing and post up and keep posted up until the filing of a true copy of the next following balance-sheet in a conspicuous place at the address aforesaid another true copy of such balance-sheet signed as aforesaid. 5. Every such agent as aforesaid shall be answerable for the doing of all such acts, matters, and things as are required to be done by such company or society by virtue of this Act and shall, unless he prove some reasonable excuse, be personally liable to all penalties imposed on such company or society for any contravention of any of the provisions of this Act. 6. A certificate in the form or to the effect

in the second Schedule to this Act purporting to be under the hand of the Registrar-General (who is hereby required to give such certificate to any person applying for the same on payment of the prescribed fee) shall be prima facie evidence in all Courts that such company or society is formed or incorporated, that the person therein named as agent is the agent of such company or society in Victoria, and that the address of such agent in Victoria is situate as therein stated, and of all other particulars mentioned in such certificate. 7. Every company or society to which this section applies and which uses the word "limited" as part of its name shall in every prospectus inviting subscriptions for its shares or debentures in the State of Victoria state the country in which the company or society is formed or incorporated. 8. If the company or society to which this section applies fails to comply with any of the requirements of this section the company or society and every officer or agent of the company or society shall be liable to a fine not exceeding fifty pounds or in the case of a continuing offence five pounds for every day during which the default continues. 9. For the purposes of this section: The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation; The expression "carries on business" includes establishing or using a share transfer or share registration office; and "to carry on business" has a corresponding meaning; The expression "director" includes any person occupying the position of director by whatever name called; and the expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of the company or society. 10. There shall be paid to the Registrar-General a fee of two guineas on registration by every company or society to which this section applies. 11. A company or society formed or incorporated outside Victoria and not carrying on in Victoria by an agent any business other than selling goods, wares, or merchandise shall not be required to do any of the matters and things prescribed by subsection 4 of this section. 12. No company or society shall be deemed to carry on business in Victoria within the meaning of this section by reason only of its investing its funds or other property in Victoria. — E. § 274. As to security for costs where plaintiff is a foreign company in liquidation, see *Acetyline Gas Co. v. Markwald*, 27 V. L. R. 301; 23 A. L. T. 54; 7 A. L. R. 210. As to ancillary local liquidation of a company registered abroad, see *In re Russell Wilkins & Sons*, 11 A. L. R. (C. N.) 26. As to priorities under § 148 see note to that section, *infra*. A foreign company registered under this Act may be wound up in Victoria. — *In re Egerton & Gordon C. G. M. Co.*, (1908), V. L. R. 22. A foreign company that merely employs a commercial traveller to solicit orders in Victoria, and forward them to the company abroad, does not carry on business in Victoria. — *Pearce v. Tower Mfg. Co.*, 24 V. L. R. 506; 20 A. L. T. 230; 5 A. L. R. 88.

Power of companies incorporated in British possessions to hold lands. 271. A company or society formed or incorporated in the United Kingdom or in a British possession which has filed with the Registrar-General the documents and particulars specified in paragraphs a, b, and c of subsection 1 of the last foregoing section shall have the same power to hold lands in the State of Victoria as if it were a company incorporated under this Act. — E. § 275.

Part X. Supplemental.

Lost documents.

Loss of memorandum, etc. 272. 1. It shall be lawful for any company duly incorporated or registered in Victoria in case the memorandum or articles of association of such company or any other document relating to such company filed with the Registrar-General in pursuance of the provisions of any law shall have been lost or destroyed to apply to a Judge of the Court for liberty to file with the Registrar-General a copy of the memorandum or articles of association of such company or such other document relating to such company as originally so filed with the Registrar-General; 2. Any such application as aforesaid may be made by summons, and such summons shall be served on the Registrar-General in the first instance and notice thereof shall also be given to such other persons and in such manner as the said Judge may direct; 3. The Judge upon being satisfied by affidavit or by *viva voce* evidence or otherwise of the fact that the original memorandum or articles of association or other document relating to such company filed as aforesaid have been lost or destroyed and of the date of the filing thereof with the Registrar-General and that a copy of such memorandum or articles of association or other document produced to the Judge is a correct copy of such memorandum or articles of association or other

document may give a certificate in or to the effect of the form in the second Schedule to this Act upon such copy and may make an order empowering the said company to file such copy with the Registrar-General who shall thereupon and upon the filing of such copy with him register the same in the manner required by the said laws relating to companies in respect of the original memorandum or articles of association or other document. 4. Upon such registration as aforesaid such copy for all purposes whatsoever shall be deemed to be and from such date as is mentioned in the said certificate as the date of the filing of the original with the Registrar-General to have been and to have the same force and effect as the original memorandum, articles of association, or other document of which it purports to be a copy; 5. Any Judge of the Court may by order upon a like application as hereinbefore mentioned by any person aggrieved and after notice to any other person whom the Judge may direct, vary, or rescind the said certificate and such order may be filed with the Registrar-General to be by him registered. Provided that no payments, contracts, dealings, acts, and things *bona fide* made, had, or done before the registration of such order and upon the faith of and in reliance upon the said certificate shall be invalidated or affected by such variation or rescission; 6. The Judge may make such order as to the costs of any application under this Act as shall appear just; 7. This section shall apply not only to companies under this Act or Part I. of the *Companies Act, 1890*, but also to all companies incorporated by or under any Act of the Parliament of Victoria.

Dealing in or advance on shares, etc.

Company not to lend money on its own shares, etc. Liability of directors. 273.

1. Except as provided in this Act no company shall either directly or indirectly purchase or deal in or lend money or make advances or allow discounts upon the security or pledge of its own shares or lend money or make advances or allow discounts upon the security or pledge of its own debentures or debenture stock, nor shall any company have a charge on any share in the company belonging to a shareholder other than a charge for the call or calls due on any share in such company belonging to him. 2. All directors, managers, and officers who consent to any act in contravention of this section shall be jointly and severally liable to repay and otherwise make good to the company all moneys expended, lent, or advanced by the company contrary to the provisions hereof. 3. Every person who by reason of his being a director, manager, or officer has become liable to make any payment under the provisions of this section shall be entitled to recover contribution as in cases of contract from any other person who if sued separately would have been liable to make the same payment. 4. No liability by this section imposed on any person as a director, manager, or officer shall on the death of any such person extend or pass to his executors or administrators nor shall the estate of any such person after his decease be made liable under this section. 5. Nothing herein contained shall affect any lien or charge existing before the commencement of this Act or shall prevent any company from lending money or making advances or allowing discounts upon the security or pledge of its own debentures or debenture stock or paying off or purchasing or redeeming any of its debentures or debenture stock where by any scheme of compromise or arrangement heretofore sanctioned by the Court or declared by any Act of Parliament to be valid and binding such loan or advance or discount or the right to pay off or purchase or redeem any of its debentures or debenture stock as the case may be is expressly permitted. 6. This section shall not apply to the borrowing shares of any building society. — As to the general fiduciary character of directors, see *Smith v. Harrison*, 3 A. J. R. 44. *Australian Boot Co. v. Thomson*, 3 A. J. R. 96; *Hardy v. Phenix Foundry Co.*, 7 V. L. R. 211; 3 A. L. T. 5; *Reeves v. Croyle*, 2 V. R. (E.) 42; 2 A. J. R. 13; *Gray v. Stevenson & Sons*, 25 V. L. R. 476; *In re O'Brien*, 21 V. L. R. 100; 16 A. L. T. 163; *Montgomerie's Brewery Co. v. Blyth*, 27 V. L. R. 175; 23 A. L. T. 37; 7 A. L. R. 182.

Banking company not to grant advances or discounts to officers. 274. 1. No banking company, and no director or manager thereof on behalf of such company, shall directly or indirectly make or grant any advance or discount to or for the benefit of any manager, officer, or auditor of such company or any firm of which he is a member, nor shall any manager, officer, or auditor of any banking company directly or indirectly obtain from such company for himself or any firm of which he is a member or for the benefit of himself or such firm any advance or discount. 2. Every director, manager, officer, or auditor or person who knowingly contravenes

or is knowingly a party to any contravention of this section shall be guilty of a misdemeanour.

Return of advances to directors, etc.

Return of advances to directors, etc., to be filed with Registrar-General. 275.

1. Every banking company and the directors and the manager thereof shall once in every six months cause to be made out and filed with the Registrar-General a return truly and correctly showing: a) The aggregate amount of advances made in Victoria owing at the date of such return by the directors, manager, officers, or auditors of the company or any of them or by firms of which such directors, manager, officers, or auditors or any of them are members or partners, and the maximum amount of such advances made during the period of six months prior to the date of such return; b) The aggregate amount of advances made in Victoria owing at the date of such return by any person or company and guaranteed by the directors, manager, officers, or auditors of the company or any of them or any firms of which such directors, manager, officers, or auditors or any of them are members or partners, and the maximum amount of such advances made and so guaranteed during the period of six months prior to the date of such return; and c) The aggregate amount of advances made in Victoria owing at the date of such return by any company of which the directors, manager, officers, or auditors or any of them are directors, manager, officers, or auditors and the maximum amount of such advances made during the period of six months prior to the date of such return. 2. Every banking company and every director and every manager of any such company who without reasonable excuse the proof of which shall be on it or him contravenes the provisions of this section shall be liable to a penalty not exceeding ten pounds for every day until the required returns are filed.

Misleading statements.

Penalty on company publishing misleading statements. 276. If any company advertises, circulates, or publishes any written or printed statement of the amount of its capital which is misleading or in which the amount of nominal or authorized capital is stated without the words "nominal" or "authorized" or in which the amount of capital or authorized or subscribed capital is stated but the amount of paid up capital or the amount of any mortgage or charge on uncalled capital is not stated every such company and every director or manager authorizing, directing, or consenting to such advertising, circulation, or publication shall be guilty of an offence against this Act.

Dividends and premiums.

Dividends payable from profits only. Directors or manager paying dividends otherwise to be personally liable. Contribution. 277. 1. No dividend shall be payable to the shareholders of any company except out of profits. 2. If any director or manager of a company wilfully pays or permits to be paid any dividend out of what he knows is not profits he shall without prejudice to any other liability be liable to a penalty not exceeding five hundred pounds and in default of payment thereof to imprisonment for any term not exceeding twelve months, and shall also be liable to the creditors of the company for the amount of the debts due by the company to them respectively to the extent that the dividends so paid shall have exceeded the profits and such amount may be recovered by the creditors or the liquidator suing on behalf of the creditors. 3. If the whole amount be recovered from one director or from the manager he may recover contribution against any other person liable as aforesaid who has directed or consented to such payment. 4. No liability by this section imposed on any person as aforesaid shall on the death of such person extend or pass to his executors or administrators, nor shall the estate of any such person after his decease be made liable under this section. 5. In this section the word "dividend" or "dividends" includes a bonus or bonuses or a payment or payments by way of bonus.

Restriction on the issue of shares at a premium. 278. 1. The directors of any company shall not make a first or any issue of shares in such company at a premium until the company shall have been established at least twelve months. 2. Where shares are issued at a premium such premium when actually received by the company in money shall be carried to the credit of a reserve fund. — For a decision on the point involved, rendered before this Act, see *Reeves v. Croyle*, 2 V. R. (E.) 42; 2 A. J. R. 13; *Mackie v. Clough*, 17 V. L. R. 493; 13 A. L. T. 122. But it has been held (1890) that dividends may be paid out of profits even where the assets of the company are of less value than the original capital. — *Phillips v. Melbourne, etc., Soap Co.*, 16 V. L. R. 111; 11 A. L. T. 148.

Restrictions as to the use of names and titles.

Restriction on use in company's name. 279. 1. Notwithstanding anything contained in any Act, no company, association, or partnership the name, style, or title of which includes the word "Royal" or the word "King" or the word "Queen", or the word "Crown", or the word "Empire", or the word "Imperial", or any word signifying Royal or Government support or patronage shall be registered in Victoria as a company, unless the Governor in Council by order published in the *Government Gazette* consents to the use of such word in the name, style, or title of such company. 2. Such consent shall not be granted to a company, whether incorporated in Victoria or elsewhere, if in the opinion of the Governor in Council the use of such word by such company would imply or be likely to convey the impression that such company is wholly or partly authorized or supported by or connected with His Majesty's Government in any part of His Majesty's dominions.

Company and person not to use word "savings", etc., in connexion with business. 280. 1. No company whether registered before or after the commencement of this Act shall assume or use or continue to assume or use the word "saving", or "savings", or the words "savings bank", or "savings institution", or words of like import as part of its name or designation, and no such word or words shall be or be deemed to be part of the same or registered title of any company. 2. No person or firm not incorporated shall assume or use or continue to assume or use any of the said words or words of like import in connexion with the trade or business designation or title of such person or firm.

Restriction on use of title "banking company", etc. 281. 1. No company whether registered before or after the commencement of this Act shall assume or use the title of "bank", "banking company", "banking house", "banking association", or "banking institution", or words of like import as part, nor shall any such words be or be deemed to be part of its name or designation, unless such company has a subscribed capital of not less than two hundred thousand pounds and a paid-up capital of not less than seventy-five thousand pounds; Provided that any company registered before the commencement of this Act may continue to retain and use any of the aforesaid titles if within twelve months from such commencement it has a subscribed capital of not less than two hundred thousand pounds and a paid-up capital of not less than seventy-five thousand pounds. 2. No person or firm not incorporated shall assume or use or continue to assume or use the title of "bank", "banker", "banking company", "banking house", "banking association", or "banking institution", or words of like import, or the word "proprietary", in connexion with the trade or business of such person or firm. 3. No company shall assume or use the word "proprietary" as part of its title until and unless it shall have complied with all the requirements required by this Act to be fulfilled by a proprietary company. 4. No company shall use the word "proprietary" as part of its title if at any time after having become a proprietary company it shall have ceased to fulfil any of the requirements required to be fulfilled by any proprietary company by this Act, or if a proprietary company under the *Companies Act, 1896*, by that Act or any amendment of that Act. 5. Every company and every director or manager of a company and every person and every member of any firm guilty of committing, causing, directing, or authorizing a breach of either this or the last preceding section shall be guilty of an offence and shall be liable to a penalty not exceeding ten pounds for every day such breach continues.

Penalty for improper use of word "limited". 282. If any person or persons trade or carry on business under any name or title of which "limited" is the last word that person or those persons shall unless duly incorporated with limited liability be liable to a fine not exceeding five pounds for every day upon which that name or title has been used. — E. § 282.

Interest in winding-up.

Interest in winding-up. 283. No interest in respect to any period subsequent to the commencement of the winding-up, whether by order of the Court, or under the supervision of the Court, or voluntarily, of any company shall be computed, charged, or payable on any debt or claim due from the company and allowed, admitted, or claimed in the winding-up: Provided however that in every winding-up, whether voluntary or compulsory, which shall be commenced after the passing of this Act every creditor shall be entitled to be paid interest after the rate of six pounds per

centum per annum from the date of the order or resolution to wind up the company out of any assets available for distribution amongst the creditors generally which may remain after satisfying the costs of the winding-up and the debts and claims established. Nothing herein contained shall affect the right of any secured creditor to realize out of his security interest due to him since the liquidation as well as before the same, but so that he shall only be entitled to be paid out of such general assets by way of interest subsequent to liquidation the difference if any between the amount thus realized and the amount of the interest at six pounds per centum per annum as aforesaid.

Transfers to avoid liability.

Transfers to infants to avoid liability. Transfers to avoid liability ineffectual for such purposes in certain cases. 284. 1. The transfers after the commencement of this Act of a share in any company or society to an infant for the purpose of avoiding or evading liability with regard to such share shall not relieve the transferror of any such liability. 2. No transfer after the commencement of this Act of a share in any company or society made for the purpose of avoiding or evading liability with regard to such share shall relieve the transferror of any such liability if the transfer is made to any person for a nominal consideration, or for no consideration, or for valuable consideration expressed but not paid to the transferror, or for a consideration paid to the transferee or with a trust or reservation, expressed or implied, for the benefit of the transferror, or to a person known to the transferror to be unable to pay the liability on such share, unless such transfer shall have been made and registered two years before the company or society shall be wound up. — It was once held that an absolute transfer of shares, though made to avoid payment of calls, is not *per se mala fide*. — *Sleep v. Virtue*, 2 V. R. (L.) 29; 2 A. J. R. 20. For a case illustrating the principle of subsection (2), decided in 1893; see *Victorian Mortgage, etc., Bank v. Australian Financial Agency*, 19 V. L. R. 680; 15 A. L. T. 31. A contract between the directors and a creditor, who is also a shareholder, releasing him from all liability on future calls in consideration of a release by him of a debt due *in praesenti* is not within this section. — *McLean Bros. & Rigge v. Grice*, (1906), V. L. R. 610; 28 A. L. T. 14; 12 A. L. R. 324.

Legal proceedings, offences, etc.

Prosecution of offences. 285. 1. All offences under this Act made punishable by any fine may be prosecuted before a Court of Petty Sessions. 2. Except where provision is otherwise made in this Act proceedings for any penalty imposed in this Act may be taken by any person whatsoever with the written consent of the Attorney-General. — E. § 276.

Applications of fines. 286. The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings or in or towards the rewarding the person on whose information or at whose suit the fine is recovered. — E. § 277.

Costs in actions by certain limited companies. 287. Where a limited company is plaintiff in any action or other legal proceeding any Judge having jurisdiction in the matter may if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence require sufficient security to be given for those costs and may stay all proceedings until the security is given. — E. § 278. This section applies to companies in voluntary liquidation. — *Victoria Mortgage, etc., Bank v. Australian Financial Agency*, 18 V. L. R. 754; 14 A. L. T. 180.

Power of Court to grant relief in certain cases. 288. If in any proceeding against a director or person occupying the position of director of a company for negligence or breach of trust it appears to the Court hearing the case that the director or person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him either wholly or partly from his liability on such terms as the Court may think proper. — E. § 279.

Expenses of winding-up where assets are not sufficient. 289. Where a company being wound up either by the Court or voluntarily has not sufficient available assets the liquidator shall not be required to incur any expense in relation to the winding-up without the express direction of the Attorney-General.

Penalty for false statement. 290. If any person in any prospectus, return, report, certificate, balance-sheet, or other document required by or for the purposes of any of the provisions of this Act specified in the third Schedule hereto wilfully makes a

statement false in any material particular knowing it to be false he shall be guilty of a misdemeanour, and shall be liable on conviction, on indictment or presentment, to imprisonment for a term not exceeding two years with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid: Provided that the fine imposed on summary conviction shall not exceed one hundred pounds. — E. § 281.

Penalty for non-performance of provisions of this Act. 291. Where any matter or thing is by this Act directed or forbidden to be done and such act so directed to be done remains undone or such act forbidden to be done is done in every such case every company, society, or person offending against such direction or prohibition shall be deemed guilty of an offence against this Act.

Penalty for offences against Acts. 292. Every company, society, or person guilty of an offence against any of the provisions of the Companies Acts or this Act or any Act amending the same shall for every such offence be liable on conviction to the penalty expressly imposed thereby, but if no penalty be so expressly imposed thereby then such company, society, or person shall for every such offence be liable on conviction to a penalty not exceeding twenty-five pounds.

Proceedings not invalidated by irregularities. 293. 1. No proceeding taken under the Companies Acts either before or after the commencement of this Act shall be invalidated by any defect, irregularity, or deficiency of notice or time, unless the Court is of opinion that substantial injustice has been caused by such defect, irregularity, or deficiency and that such injustice can not be remedied by any order of such Court. 2. The Court may if it think fit make an order declaring that such proceeding is valid notwithstanding any such defect, irregularity, or deficiency.

Registrar-General to report contravention of Act to Attorney-General or Solicitor-General. 294. It shall be the duty of the Registrar-General to take cognizance of and to report to the Attorney-General or Solicitor-General every contravention on the part of any person or any company or society of the provisions of the Companies Acts or this Act or any Act amending the same requiring any statement, return, summary, balance-sheet, or any document whatsoever to be filed, lodged, or deposited at the office of the Registrar-General.

Schedules.

First Schedule.

Table A. Regulations for Management of a Company Limited by Shares.

Preliminary.

1. In these regulations unless the context otherwise requires expressions defined in the *Companies Act, 1910*, or any statutory modification thereof in force at the date at which these regulations become binding on the company shall have the meanings so defined, and words importing the singular shall include the plural and vice versa and words importing the masculine gender shall include females and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section ninety-five of the *Companies Act, 1910*, if and so far as those restrictions are binding upon the company.

Shares.

3. Subject to the provisions (if any) in that behalf of the memorandum of association of the company and without prejudice to any special rights previously conferred on the holders of existing shares in the company any share in the company may be issued with such preferred, deferred, or other special rights or such restrictions whether in regard to dividend, voting, return of share capital, or otherwise as the company may from time to time by special resolution determine.

4. If at any time the share capital is divided into different classes of shares the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent. of the nominal amount of the share; and the directors shall as regards any allotment of shares duly comply with such of the provisions of sections ninety-three and ninety-six of the *Companies Act, 1910*, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall without payment be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon, provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost, or destroyed it may be renewed on payment of such fee (if any) not exceeding one shilling, and on such terms (if any) as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of or in loans upon the security of the company's shares.

Lien.

9. The company shall have a lien on every share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect of that share, but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien (if any) on a share shall extend to all dividends payable thereon.

10. The company may sell in such manner as the directors think fit any shares on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable nor until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable has been given to the registered holder for the time being of the share or the person entitled by reason of his death or insolvency to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares and he shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on shares.

12. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nominal amount of the share or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen days' notice specifying the time or times of payment) pay to the company at the time or times so specified the amount called on his shares.

13. The joint holders of a share shall (subject to the provisions of section thirty-three of the *Companies Act, 1910*) be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof the person from whom the sum is due shall pay interest upon the sum at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time whether on account of the amount of the share or by way of premium as if the same had become payable by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may if they think fit receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him, and upon all or any of the moneys so advanced may (until the same would but for such advance become presently payable) pay interest at such rate (not exceeding without the sanction of the company in general meeting six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and transmission of shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form or in any usual or common form which the directors shall approve:

I A.B. of _____ in consideration of the sum of £ _____
 paid to me by C.D. of _____ (hereinafter called "the said transferee") do hereby transfer to the said transferee the share (or shares) numbered _____
 in the undertaking called the _____ Company Limited to hold unto the said transferee, his executors, administrators, and assigns subject to the several conditions on which I held the same at the time of the execution thereof: and I the said transferee do hereby agree to take the said share (or shares) subject to the conditions aforesaid.
 As witness our hands the _____ day of _____

Witness to the signatures of, etc.

20. The directors may decline to register any transfer of shares not being fully paid shares to a person of whom they do not approve and may also decline to register any transfer of shares on which the company has a lien. The directors may also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless: a) A fee not exceeding two shillings and sixpence is paid to the company in respect thereof, and b) The instrument of transfer is accompanied by the certificate of the shares to which it relates and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

21. The trustees, executors, or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders the survivors or survivor, or the trustees, executors, or administrators of the deceased survivor shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of a member shall upon such evidence being produced as may from time to time be required by the directors have the right either to be registered as a member in respect of the share or instead of being registered himself to make such transfer of the share as the deceased, bankrupt, or insolvent person could have made; but the directors shall in either case have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased, bankrupt, or insolvent person before the death, bankruptcy, or insolvency.

23. A person becoming entitled to a share by reason of the death, bankruptcy, or insolvency of the holder shall be entitled to the same dividend and other advantages to which he would be entitled if he were the registered holder of the share except that he shall not before being registered as a member in respect of the share be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof the directors may at any time thereafter during such time as any part of such call or instalment remains unpaid serve a notice on him requiring payment of so much of the call or instalments as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than the expiration of fourteen days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time appointed the shares in respect of which the call was made will be liable to be forfeited.

26. If the requirements of any such notice as aforesaid are not complied with any share in respect of which the notice has been given may at any time thereafter before the payment required by the notice has been made be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall notwithstanding remain liable to pay to the company all moneys which at the date of forfeiture were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

29. A statutory declaration in writing that the declarant is a director of the company and that a share in the company has been duly forfeited on a date stated in the declaration shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration and the receipt of the company for the consideration (if any) given for the share on the sale or disposition thereof shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money (if any) nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time whether on account of the amount of the share or by way of premium as if the same had been payable by virtue of a call duly made and notified.

Conversion of shares into stock.

31. The directors may with the sanction of the company previously given in general meeting convert any paid-up shares into stock and may with the like sanction reconvert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same or any part thereof in the same manner and subject to the same regulations as and subject to which the shares from which the stock arose might previously to conversion have been transferred or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall according to the amount of the stock held by them have the same rights, privileges, and advantages as regards dividends, voting at meetings of the company, and other matters as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not if existing on shares have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share warrants) as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stock-holder".

Share warrants.

35. The company may issue share warrants and accordingly the directors may in their discretion with respect to any share which is fully paid up on application in writing signed by the person registered as holder of the share and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share and the amount of the stamp duty (if any) on the warrant and such fee as the directors may from time to time require issue under the company's seal a warrant duly stamped stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends or other moneys on the shares included in the warrant.

36. A share warrant shall entitle the bearer to the shares included in it and the shares shall be transferred by the delivery of the share warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share warrant. The company shall on two days' written notice return the deposited share warrant to the depositor.

39. Subject as herein otherwise expressly provided no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company or attend or vote or exercise any other privilege of a member at a meeting of the company or be entitled to receive notices from the company; but the bearer of a share warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant and he shall be a member of the company.

40. The directors may from time to time make rules as to the terms on which (if they shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss, or destruction.

Alteration of capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital all new shares shall before issue be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion as nearly as the circumstances admit to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer if not accepted will be deemed to be declined and after the expiration of that time or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) can not, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the shares in the original share capital.

44. The company may by special resolution: a) Consolidate and divide its share capital into shares of larger amount than its existing shares; b) By subdivision of its existing shares or any of them divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject nevertheless to the provisions of paragraph(d) of subsection 1 of section forty-eight of the *Companies Act, 1910*; c) Cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person; d) Reduce its share capital in any manner and with and subject to any incident authorized and consent required by law.

General meetings.

45. The statutory general meeting of the company shall be held within the period required by section seventy-two of the *Companies Act, 1910*.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting or in default at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

47. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may whenever they think fit convene an extraordinary general meeting, and extraordinary general meetings shall also be convened on such requisition or in default may be convened by such requisitionists as provided by section seventy-three of the *Companies Act, 1910*. If at any time there are not within the State of Victoria sufficient directors capable of acting to form a quorum any director or any two members of the company may convene an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the the directors.

Proceedings at general meeting.

49. Seven days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day, and the hour of meeting and in case of special business the general nature of that business shall be given in manner hereinafter mentioned or in such other manner (if any) as may be prescribed by the company in general meeting, to such persons as are under the regulations of the company entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets, and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, three members personally present shall be a quorum.

52. If within half-an-hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members shall be dissolved; in any other case it shall stand adjourned to the same day in the next week at the same time and place and if at the adjourned meeting a quorum is not present within half-an-hour from the time appointed for the meeting the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall preside as chairman at every general meeting of the company.

54. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairman the members present shall choose some one of their number to be chairman.

55. The chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members and unless a poll is so demanded a declaration by the chairman that a resolution has, on a show of hands, been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book of the proceedings of the com-

pany shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of, or against that resolution.

57. If a poll is duly demanded it shall be taken in such manner as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes whether on a show of hands or on a poll the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which he is the holder.

61. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

62. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote whether on a show of hands or on a poll, by his committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that Court and any such committee, curator bonis, or other person may on a poll vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy.

65. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing or, if the appointer is a corporation either under the common seal or under the hand of an officer or attorney so authorized. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power of attorney or other authority if any under which it is signed or a notarially certified copy of that power or authority shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form or in any other form which the directors shall approve:

Company Limited.

"I, _____ of _____ being a member
of the _____ Company Limited hereby appoint _____ of
as my proxy to vote for me and on my behalf at the (ordinary or extraordinary
as the case may be) general meeting of the company to be held on the
day of _____ and at any adjournment thereof."
Signed this _____ day of _____

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

70. The qualification of a director shall be the holding of at least one share in the company and it shall be his duty to comply with the provisions of section eighty of the *Companies Act, 1910*.

Powers and duties of directors.

71. The business of the company shall be managed by the directors who may pay all expenses incurred in getting up and registering the company and may exercise all such powers of the company as are not by the *Companies Act, 1910*, or any statutory modification thereof for the time being in force or by these articles required to be exercised by the company in general meeting subject nevertheless to any regulation of these articles to the provisions of the said Act and to such regulations being not inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term and at such remuneration (whether by way of salary, or commission or participation in profits or partly in one way and partly in another) as they may think fit and a director so appointed shall not while holding that office be subject

to retirement by rotation or taken into account in determining the rotation of retirement of directors; but his appointment shall be subject to determination ipso facto if he ceases from any cause to be a director or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73. The amount for the time being remaining undischarged of moneys borrowed or raised by the directors for the purposes of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the *Companies Act, 1910*, or any statutory modification thereof for the time being in force and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it and to keeping a register of the directors and to sending to the Registrar-General an annual list of members and a summary of particulars relating thereto and notice of any consolidation or increase of share capital or conversion of shares into stock and copies of special resolutions and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for that purpose: a) Of all appointments of officers made by the directors; b) Of the names of the directors present at each meeting of the directors and of any committee of the directors; c) Of all resolutions and proceedings at all meetings of the company, and of the directors and of committees of directors; and every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualifications of directors.

77. The office of director shall be vacated if the director: a) Ceases to be a director by virtue of section eighty of the *Companies Act, 1910*; or b) Holds any other office of profit under the company except that of managing director or manager; or c) Becomes insolvent; or d) Is found lunatic or becomes of unsound mind; or e) Is concerned or participates in the profits of any contract with the company; Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with or done any work for the company of which he is director; but a director shall not vote in respect of any such contract or work, and if he does so vote his vote shall not be counted.

Rotation of directors.

78. At the first ordinary meeting of the company the whole of the directors shall retire from office and at the ordinary meeting in every subsequent year one-third of the directors for the time being or if their number is not three or a multiple of three then the number nearest to one-third shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up the meeting shall stand adjourned till the same day in the next week at the same time and place and if at the adjourned meeting the places of the vacating directors are not filled up the vacating directors or such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring in the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time and from time to time to appoint a person as an additional director who shall retire from office at the next following ordinary general meeting but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had be-

come a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of directors.

87. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chairman shall have a second or casting vote. A director may and the secretary on the requisition of a director shall at any time summon a meeting of the directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors the continuing directors may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings; if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same the members present may choose one of their number to be chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present and in case of an equality of votes the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and reserve.

95. The company in general meeting may declare dividends but no dividend shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividend shall be paid otherwise than out of profits.

98. Subject to the rights of persons if any entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid (in cash or otherwise than in cash) on the shares but if and so long as nothing is paid up on any of the shares in the company dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall while carrying interest be treated for the purposes of this article as paid on the share.

99. The directors may before recommending any dividend set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall at the discretion of the directors be applicable for meeting contingencies, or for equalising dividends or for any other purpose to which the profits of the company may be properly applied, and pending such application may at the like discretion either be employed in the business of the company or be invested in such investments (other than shares of the company) as the directors may from time to time think fit.

100. If several persons are registered as joint holders of any share any one of them may give effectual receipts for any dividend payable on the share.

101. Notice of any dividend that may have been declared shall be given in manner herein-after mentioned to the persons entitled to share therein.

102. No dividend shall bear interest against the company.

Accounts.

103. The directors shall cause true accounts to be kept: Of the sums of money received and expended by the company and the matter in respect of which such receipt and expenditure takes place and of the assets and liabilities of the company.

104. The books of account shall be kept at the registered office of the company or at such other place or places as the directors think fit and shall always be open to the inspection of the directors.

105. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of

the company or any of them shall be open to the inspection of members not being directors and no member (not being a director) shall have any right of inspecting any account or book or document of the company except as conferred by statute or authorized by the directors or by the company in general meeting.

106. Once at least in every year the directors shall lay before the company in general meeting a profit and loss account for the period since the preceding account or (in the case of the first account) since the incorporation of the company, made up to a date not more than six months before such meeting.

107. A balance-sheet shall be made out in every year and laid before the company in general meeting made up to a date not more than six months before such meeting. The balance-sheet shall be accompanied by a report of the directors as to the state of the company's affairs and the amount which they recommend to be paid by way of dividend, and the amount (if any) which they propose to carry to a reserve fund.

108. A copy of the balance-sheet and report shall seven days previously to the meeting be sent to the persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

109. The directors shall in all respects comply with the provisions of section one hundred and fifteen of the *Companies Act, 1910*, or any statutory modification thereof for the time being in force.

Audit.

110. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twenty and one hundred and twenty-one of the *Companies Act, 1910*, or any statutory modification thereof for the time being in force.

Notices.

111. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address or (if he has no registered address in the State of Victoria) to the address (if any) within the State of Victoria supplied by him to the company for the giving of notices to him.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing prepaying and posting a letter containing the notice and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

112. If a member has no registered address in the State of Victoria and has not supplied to the company an address within the State of Victoria for the giving of notices to him a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

113. A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

114. A notice may be given by the company to the persons entitled to a share in consequence of the death, bankruptcy, or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name or by the title of representatives of the deceased, or assignee, or trustee of the bankrupt or insolvent or by any like description at the address (if any) in the State of Victoria supplied for the purpose by the persons claiming to be so entitled or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death, bankruptcy, or insolvency had not occurred.

115. Notice of every general meeting shall be given in some manner hereinbefore authorized to a) Every member of the company (including bearers of share warrants) except those members who (having no registered address within the State of Victoria) have not supplied to the company an address within the State of Victoria for the giving of notices to them, and also to b) Every person entitled to a share in consequence of the death, bankruptcy, or insolvency of a member who but for his death, bankruptcy, or insolvency would be entitled to receive notice of the meeting. No other persons shall be entitled to receive notices of general meetings.

Table B.

[Fees to be paid to the Registrar-General.]

Second Schedule.

Form A.

The Companies Act, 1910.

Statement in lieu of prospectus,
filed by

Limited

pursuant to section ninety of the *Companies Act, 1910*.
Presented for filing by

The Companies Act, 1910.
Statement in Lieu of Prospectus.

Limited.

The nominal share capital of the company	£																		
Divided into	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">Shares of £</td> <td style="width: 50%; text-align: center;">each.</td> </tr> <tr> <td style="text-align: center;">"</td> <td style="text-align: center;">"</td> </tr> <tr> <td style="text-align: center;">"</td> <td style="text-align: center;">"</td> </tr> </table>	Shares of £	each.	"	"	"	"												
Shares of £	each.																		
"	"																		
"	"																		
Names, descriptions, and addresses of directors or proposed directors.																			
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.																			
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">1.</td> <td style="width: 75%;">shares of £</td> <td style="width: 20%; text-align: right;">fully</td> </tr> <tr> <td></td> <td>paid.</td> <td></td> </tr> <tr> <td style="text-align: center;">2.</td> <td>shares upon which £</td> <td></td> </tr> <tr> <td></td> <td>per share credited as paid.</td> <td></td> </tr> <tr> <td style="text-align: center;">3.</td> <td>debenture</td> <td style="text-align: right;">£</td> </tr> <tr> <td style="text-align: center;">4.</td> <td>Consideration.</td> <td></td> </tr> </table>	1.	shares of £	fully		paid.		2.	shares upon which £			per share credited as paid.		3.	debenture	£	4.	Consideration.	
1.	shares of £	fully																	
	paid.																		
2.	shares upon which £																		
	per share credited as paid.																		
3.	debenture	£																	
4.	Consideration.																		
The consideration for the intended issue of those shares and debentures.																			
Names and addresses of *) vendors of property purchased or acquired or proposed to be **) purchased or acquired by the company.																			
Amount (in cash shares or debentures) payable to each separate vendor.																			
Amount (if any) paid or payable (in cash or shares or debentures) for any such property specifying amount (if any) paid or payable for goodwill	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;">Total purchase price £</td> <td></td> </tr> <tr> <td style="padding-left: 10px;">Cash</td> <td style="text-align: right;">£</td> </tr> <tr> <td style="padding-left: 10px;">Shares</td> <td style="text-align: right;">£</td> </tr> <tr> <td style="padding-left: 10px;">Debentures</td> <td style="text-align: right;">£</td> </tr> <tr> <td style="padding-left: 10px;">Goodwill</td> <td style="text-align: right;">£</td> </tr> </table>	Total purchase price £		Cash	£	Shares	£	Debentures	£	Goodwill	£								
Total purchase price £																			
Cash	£																		
Shares	£																		
Debentures	£																		
Goodwill	£																		
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company or	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;">Amount paid.</td> <td></td> </tr> <tr> <td style="padding-left: 10px;">" payable.</td> <td></td> </tr> </table>	Amount paid.		" payable.															
Amount paid.																			
" payable.																			
Rate of the commission	Rate per cent.																		
Estimated amount of preliminary expenses	£																		
Amount paid or intended to be paid to any promoter.	Name of promoter.																		
Consideration for the payment.	Amount £																		
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	Consideration:																		
Time and place at which the contracts or copies thereof may be inspected.																			
Names and addresses of the auditors of the company (if any).																			
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company or where the interest of such a director consists in being a partner in a firm the nature																			

*) For definition of vendor, see Section 88 (2) of the *Companies Act, 1910.*

**) See Section 88 (3) of the *Companies Act, 1910.*

and extent of the interest of the firm with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become or to qualify him as a director or otherwise for services rendered by him or by the firm in connexion with the promotion or formation of the company.

Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance-sheets or reports of the auditors or other reports.

Nature of the provisions.

(Signatures of the persons above named as directors or proposed directors or of their agents authorized in writing)

Form B.

Companies Act, 1910.

Balance-sheet of

At

[being a banking company]

(Including London Branch at

).

Dr.

Cr.

	£ s. d.		£ s. d.	£ s. d.
To Capital paid up (<i>viz.</i> : Preference shares paid in cash to Ordinary shares paid up to per share)		By Coin, bullion, and cash at bankers		
„ Notes in circulation		„ (<i>Government, municipal and other public stocks, and funds and other debentures if any</i>)		
„ Bills in circulation		„ Bills and remittances in transitu		
„ Government Deposits Not bearing interest Bearing interest		„ Notes and bills of other banks		
„ Other Deposits (<i>and interest accrued</i>) Not bearing interest Bearing interest		„ Balances due from other banks		
„ Balances due to other banks		„ (<i>Stamps if any</i>)		
„ Contingent liabilities as per contra (<i>Debentures or debenture stock outstanding if any</i>) (<i>Debts due on judgment if any</i>) (<i>Debts due and secured otherwise than by debentures or debenture stock if any</i>) (<i>Amounts due on contracts not included in any of the above mentioned items if any</i>) (<i>Any other liabilities if any</i>)		„ Real estate, consisting of bank premises		
„ (<i>Reserve fund if any</i>)		„ Other real estate		
„ Profit and loss		„ Bills discounted and other advances, exclusive of provision for bad or doubtful debts		
		„ (<i>Money due to bank other than as above mentioned, exclusive of provision for bad or doubtful debts if any</i>)		
		„ Liabilities of customers and others in respect of contingent liabilities as per contra		
		„ (<i>Shares in other companies if any</i>)		

I, (*manager or public officer or by whatever designation the principal officer is styled*), do solemnly and sincerely declare

(*That the reserve fund (if any) and accumulated profits (if any) are used in the business or how otherwise.*)

That the accompanying statement and balance-sheet of the bank is, to the best of my knowledge and belief, true in every particular.

(*Names, addresses, and occupations of the persons who are the directors of the company at the date of the statement.*)

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

Declared at Melbourne in the State of Victoria this

day of

We
of the

of Melbourne, being directors
do hereby certify

that in our opinion the above balance-sheet is true and correct and is drawn up so as to exhibit a true and correct view of the state of the company's affairs.

Dated at Melbourne this

day of

Form C.

Companies Act, 1910.

Company or Society Limited (not being a Banking Company).

Balance-sheet at

19

Liabilities.

Assets²⁾.

1) Capital

Reserve fund (for particulars of specific investments, if any, see contra)

Profit and loss

Debentures

Mortgages

Deposits with accrued interest

Sundry creditors

Amounts owing on open accounts

Amounts owing on judgment

Bills and notes payable

Bankers, amount of overdrawn accounts

Contingent liabilities

3) Government, Municipal and other Public Debentures or Stock

3) Freehold property

Leasehold property, showing the provision made for depreciation and ultimate extinction of the asset

3) Plant and machinery

3) Fixtures, fittings, and furniture

3) Stock in trade

Sundry debtors (after making provision for all debts considered bad or doubtful)

Bills and notes receivable (after making provision for all debts considered bad or doubtful)

Loans on mortgage of freehold property

3) Shares in other companies

Amount at credit with bankers

Cash in hand

3) Other items (specifying them)

Contingent assets

I, (manager or public officer, or by whatever designation the principal officer is styled) do solemnly and sincerely declare —

That the reserve fund (if any) and accumulated profits (if any) are used in the business (or how otherwise).

That the accompanying statement and balance-sheet of the company is, to the best of my knowledge and belief, true in every particular.

That the names, addresses, and occupations of persons who are the directors of the company at the date of this statement are —

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

Declared at , in the State of Victoria, this

day

of

We,

of,

, and

, of

, being the directors of the

Limited, do hereby certify that, in our opinion, the above balance-sheet is correct, and is drawn up so as to exhibit a correct view of the state of the company's shares.

Dated at

this

day of

Form D.

Form of Statement to be published by Banking and Insurance Companies and Deposit, Provident, or Benefit Societies.

I (manager, or as the case may be) do solemnly and sincerely declare —

4) The share capital of the company is

divided into

shares of

each.

1) Distinguish between the various classes of shares issued, show the amount or amounts called up thereon, and the arrears of calls unpaid, and specify what amount of capital has been paid up in money, and what amount otherwise than in money. — 2) The particulars of specific investments, if any, of reserve fund must be set out clearly. — 3) Basis of value, whether at cost price, market price, or otherwise, to be stated. A statement of profit and loss shall be annexed to and form part of the balance-sheet. — 4) If the company has no share capital the portion of the statement relating to capital and shares must be omitted.

The number of shares issued is _____
 Calls to the amount of _____ pounds per share have been made under which
 the sum of _____ pounds has been received.

The liabilities of the company on the first day of January (or July) were —

Debts owing to sundry persons by the company —

On judgment £

On specialty £

On notes or bills £

On simple contracts £

On estimated liabilities £

The assets of the company on that day were —

Government securities (*stating them*)

Bills of exchange and promissory notes £

Cash at the bankers £

Other securities £

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

Form E.

Memorandum of Association of a Company limited by Shares.

1st. The name of the company is "The Eastern Steam Packet Company Limited."

2nd. The objects for which the company is established are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine and the doing all such other things as are incidental or conducive to the attainment of the above object."

3rd. The liability of the members is limited.

4th. The share capital of the company is Two hundred thousand pounds divided into one thousand shares of Two hundred pounds each.

We the several persons whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
1. John Jones of merchant	200
2. John Smith of "	25
3. Thomas Green of "	30
4. John Thompson of "	40
5. Caleb White of "	15
Total shares taken	310

Dated the _____ day of _____ 19____

Witness to the above signatures,

A.B., No. 13 Little Collins-street, Melbourne.

Form F.

Memorandum and Articles of Association of a Company limited by Guarantee and not having a Share Capital.

Memorandum of Association.

1st. The name of the company is "The Mutual Marine Association Limited."

2nd. The objects for which the company is established are "the mutual insurance of ships belonging to members of the company and the doing all such other things as are incidental or conducive to the attainment of the above object."

3rd. The liability of the members is limited.

4th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member and the costs, charges, and expenses of winding up and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding ten pounds.

We the several persons whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

- | | |
|---------------------|-----------|
| 1. John Jones of | merchant. |
| 2. John Smith of | " |
| 3. Thomas Green of | " |
| 4. John Thompson of | " |
| 5. Caleb White of | " |

Dated the day of 19

Witness to the above signatures,

A.B., No. 13 Little Collins-street, Melbourne.

Articles of Association to accompany preceding Memorandum of Association.*Number of members.*

1. The company for the purpose of registration is declared to consist of five hundred members.

2. The directors hereinafter mentioned may whenever the business of the association requires it register an increase of members.

Definition of members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General meetings.

4. The first general meeting shall be held at such time not being less than one month nor more than three months after the incorporation of the company, and at such place as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting or in default at such time in the month following that in which the anniversary of the company's incorporation occurs and at such place as the directors shall appoint. In default of a general meeting being so held a general meeting shall be held in the month next following and may be convened by any two members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may whenever they think fit and shall on a requisition made in writing by any five or more members convene an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forthwith proceed to convene a general meeting; if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited the requisitionists or any other five members may themselves convene a meeting.

Proceedings at general meetings.

10. Seven days' notice at the least specifying the place the day and the hour of meeting, and in case of special business the general nature of the business shall be given to the members in manner hereinafter mentioned or in such other manner if any as may be prescribed by the company in general meeting but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of the consideration of the accounts, balance-sheets, and the ordinary report of the directors and auditors the election of directors and other officers in the place of those retiring by rotation and the fixing of the remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is to say): if the members of the company at the time of the meeting do not exceed ten in number the quorum shall be five, if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty with this limitation that no quorum shall in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present the meeting if convened on the requisition of the members shall be dissolved, in any other case it shall stand adjourned to the same day in the following week at the same time and place and if at such adjourned meeting a quorum of members is not present it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman or if at any meeting he is not present at the time of holding the same the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may with the consent of the meeting adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting unless a poll is demanded by at least three members a declaration by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid the same shall be taken in such manner as the chairman directs and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot he may vote by his committee, curator bonis, or other legal curator.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy. A proxy shall be appointed in writing under the hand of the appointer or if such appointer is a corporation, under its common seal.

23. No person shall act as a proxy unless he is a member or unless he is appointed to act at the meeting as proxy for a corporation.

The instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:
Company Limited.

being a member of the _____ of _____ Company Limited hereby appoint _____ of _____ as my proxy to vote for me and on my behalf at the (ordinary or extraordinary as the case may be) general meeting of the company to be held on the _____ day of _____ and at any adjournment thereof.

Signed this _____ day of _____

Directors.

25. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed the subscribers of the memorandum of association shall for all the purposes of the *Companies Act, 1910*, be deemed to be directors.

Powers of directors.

27. The business of the company shall be managed by the directors who may exercise all such powers of the company as are not by the *Companies Act, 1910*, or by any statutory modification thereof for the time being in force or by these articles required to be exercised by the company in general meeting but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Election of directors.

28. The directors shall be elected annually by the company in general meeting.

Business of company.

(Here insert rules as to mode in which business of insurance is to be conducted.)

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections one hundred and twenty and one hundred and twenty-one of the *Companies Act, 1910*, or any statutory modification thereof for the time being in force and for this purpose the said sections shall have effect as if the word "members" were substituted for "shareholders" and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally or by sending it by post to him to his registered address.

31. Where a notice is sent by post service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post

Names, addresses, and descriptions of subscribers.

- | | |
|-------------------------------|-----------|
| 1. John Jones of | merchant. |
| 2. John Smith of | " |
| 3. Thomas Green of | " |
| 4. John Thompson of | " |
| 5. Caleb White of | " |

Dated the day of 19
Witness to the above signatures,
A.B., No. 13 Little Collins-street, Melbourne.

Form G.

Memorandum and Articles of Association of a Company limited by Guarantee and having a Share Capital.

Memorandum of association.

1st. The name of the company is "The Highland Hotel Company Limited."

2nd. The objects for which the company is established are "the facilitating travelling by tourists and others in Victoria by providing hotels and conveyances by sea and by land for the accommodation of travellers and the doing all such other things as are incidental or conducive to the attainment of the above objects."

3rd. The liability of the members is limited.

4th. Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member or within one year afterwards for payment of the debts and liabilities of the company contracted before he ceases to be a member and the costs, charges, and expenses of winding-up the same and for the adjustment of the rights of the contributories amongst themselves such amount as may be required not exceeding Twenty pounds.

5th. The share capital of the company shall consist of Five hundred thousand pounds divided into five thousand shares of One hundred pounds each.

We the several persons whose names and addresses are subscribed are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names:

Names, Addresses, and Description of Subscribers.		Number of Shares taken by each Subscriber.
1. John Jones of	merchant	200
2. John Smith of	"	25
3. Thomas Green of	"	30
4. John Thompson of	"	40
5. Caleb White of	"	15
Total shares taken		310

Dated the day of 19 .
Witness to the above signatures,
A.B., No. 13 Little Collins-street, Melbourne,

Articles of association to accompany preceding memorandum of association.

1. The directors may with the sanction of the company in general meeting reduce the amount of shares in the company.

2. The directors may with the sanction of the company in general meeting cancel any shares belonging to the company.

3. All the articles of Table A. of the *Companies Act, 1910*, shall be deemed to be incorporated with these articles and to apply to the company.

Names, addresses, and description of subscribers.

- | | |
|-------------------------------|-----------|
| 1. John Jones of | merchant. |
| 2. John Smith of | " |
| 3. Thomas Green of | " |
| 4. John Thompson of | " |
| 5. Caleb White of | " |

Dated the day of 19 .
Witness to the above signatures,
A.B., No. 13 Little Collins-street, Melbourne.

*Form H.***Memorandum and Articles of Association of an unlimited Company having a Share Capital.***Memorandum of association.*

1st. The name of the company is "The Patent Stereotype Company."

2nd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates of which method John Smith of Melbourne is the sole patentee."

We the several persons whose names are subscribed are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names:

Names, Addresses, and Description of Subscribers.	Number of Shares taken by each Subscriber.
1. John Jones of merchant	3
2. John Smith of "	2
3. Thomas Green of "	1
4. John Thompson of "	2
5. Caleb White of "	2
Total shares taken	10

Dated the . . . day of . . . 19 . . .

Witness to the above signatures,
A.B., No. 20 Collins-street, Melbourne.

Articles of association to accompany the preceding memorandum of association.

1. The share capital of the company is Two thousand pounds divided into twenty shares of One hundred pounds each.

2. All the articles of Table A of the *Companies Act, 1910*, shall be deemed to be incorporated with these articles and to apply to the company.

Names, addresses, and description of subscribers.

1. John Jones of merchant.
2. John Smith of "
3. Thomas Green of "
4. John Thompson of "
5. Caleb White of "

Dated the . . . day of . . . 19 . . .

Witness to the above signatures,
A.B., No. 20 Collins-street, Melbourne.

Form I. As required by Part II of the Act.

Summary of share capital and shares of the	Company
Limited made up to the . . . day of . . . 19 . . .	(being the fourteenth day after the date of the first ordinary general meeting in 19 . . .)
Nominal share capital £ . . . divided into ¹⁾ . . .	<div style="display: flex; align-items: center;"> <div style="font-size: 3em; margin-right: 10px;">{</div> <div> shares of £ . . . each. shares of £ . . . each. </div> </div>
Total number of shares taken up;) including shares held under share warrants to the . . . day of . . . 19 . . .	(which number must agree with the total shown in the list as held by existing members including shares held under share warrants)
Number of shares issued subject to payment wholly in cash	
Number of shares issued as fully paid up otherwise than in cash	
Number of shares issued as partly paid up to the extent of . . . per {	
share otherwise than in cash	
1) There has been called up on each of . . . shares, £ . . .	
There has been called up on each of . . . shares, £ . . .	
2) There has been called up on each of . . . shares, £ . . .	
3) Total amount of calls received including payments on application and allotment	£ . . .

1) When there are shares of different kinds or amounts (e. g., Preference and Ordinary, or £ 10 or £ 5) state the numbers and nominal values separately. — 2) Where various amounts have been called or there are shares of different kinds state them separately. — 3) Include what has been received on forfeited as well as on existing shares.

Total amount (if any) agreed to be considered as paid on	shares	}	£	.
which have been issued as fully paid up otherwise than in cash				
Total amount (if any) agreed to be considered as paid on	shares	}	£	.
which have been issued as partly paid up to the extent of per share . .				
Total amount of calls unpaid			£	.
Total amount (if any) of sums paid by way of commission in respect of	shares or debentures or allowed by way of discount since date of last summary	}	£	.
Total amount (if any) paid on ¹⁾	shares forfeited		£	.
Total amount of shares and stock for which share warrants are out-	standing	}	£	.
Total amount of share warrants issued and surrendered respectively since	date of last summary	}	£	.
Number of shares or amount of stock comprised in each share warrant .				
Total amount of debts due from the company in respect of all mortgages	and charges which are required to be registered with the Registrar-General or which would require registration if created after the twenty-fourth day of December eighteen hundred and ninety-six	}	£	.

List of persons holding shares in the _____ Company
Limited on the _____ day of _____ 19 _____ and of persons who have held
shares therein at any time since the date of the last return showing their names and ad-
dresses and an account of the shares so held.

Folio in Register Ledger containing Particulars.	Names, Addresses, and Occupations.				Account of Shares.				Remarks.
					* Number of Shares held by existing Members at Date of Return.	*** Particulars of Shares transferred since the Date of the last Return by Persons who are still Members.		*** Particulars of Shares transferred since the Date of the last Return by Per- sons who have ceased to be Members.	
	Surname.	Christian Name.	Address.	Occu- pa- tion.		Number.**	Date of Registration of Transfer.	Number.**	

*) The aggregate number of shares held, and not the distinctive numbers, must be stated, and the column must be added up throughout so as to make one total to agree with that stated in the summary to have been taken up.
**) When the shares are of different classes these columns may be subdivided so that the number of each class held or transferred may be shown separately.
***) The date of registration of each transfer should be given as well as the number of shares transferred on each date. The particulars should be placed opposite the name of the transferor and not opposite that of the transferee, but the name of the transferee may be inserted in the "Remarks" column immediately opposite the particulars of each transfer.

Names and addresses of the persons who are the Directors of the
Limited on the _____ day of _____ 19 _____

Names.	Addresses.

Note. Banking companies must add a list of all their places of business.
(State whether manager or secretary) (Signature)

Form J.
The Companies Act, 1910.

It is hereby certified that the within written document has been proved to the satisfac-
tion of me _____ one of the Judges of the Supreme Court of the State of
Victoria to be a true copy of the original (*here describe the document as "Memorandum of asso-
ciation", "Articles of association," or as the case may require)* of the _____ Com-
pany (*Limited*) and that the _____ day of _____ is the
date upon which the said original was filed with the Registrar-General.
Dated this _____ day of _____ 19 _____

Judge of the Supreme Court.

¹⁾ State the aggregate number of shares forfeited (if any).

*Form K.***The Companies Act, 1910.**

I the undersigned being the duly appointed Agent of (*here state the name of the company or society*) do hereby solemnly and sincerely declare that the said company proposes carrying on business in Victoria.

The name of the Agent of the said company or society is (*here state full Christian name and surname*).

The address of the said Agent in Victoria is at (*here state the city, town, or place where situate, and the name of the street and number of house if any*).

The name of the company or society is (*here state name*).

The place where the said company or society was formed or incorporated is and the situation of its head office is at (*state name of street &c.*). And I make &c.

Taken before me this

day of

19

Signature

A Justice of the Peace.

*Form L.***The Companies Act, 1910.**

This is to certify that a company or society called the

formed or incorporated in

and carrying on business in Victoria did on the

day of

19

duly file in the office of the Registrar-General particulars of its name and the name and place of abode or business of the person appointed by such company or society as Agent to carry on its business in Victoria and that the name of the Agent is and that his address in Victoria is situated at

Given under my hand this

day of

19

Registrar-General.

*Third Schedule.***Provisions referred to in Section 290 of the Act.**

Provisions relating to:

The conclusiveness of certificates of incorporation	s. 25
Restrictions on appointments or advertisements of directors	s. 79
Restrictions on commencement of business	s. 95
Returns as to allotments	s. 96
Statutory meetings	s. 72
The particulars as to directors and mortgage debt in the annual summary	s. 33
The appointment and remuneration and powers and duties of auditors	ss. 120, 121
Requirements in prospectus	s. 88
Obligations of companies where no prospectus is issued	s. 90
Registration of mortgages and charges	s. 101
Filing accounts of receiver and manager	s. 103
Notice by liquidator in voluntary winding-up of his appointment	s. 188
Rights of creditors in a voluntary winding-up	s. 189
Requirements as to companies established outside the State of Victoria	s. 270

*Fourth Schedule.**Part I. Enactments Repealed.*

Number of Act.	Short title.	Extent of Repeal.
No. 1074	<i>The Companies Act, 1890</i>	Section 1 so far as it relates to Trading Companies. Sections 3 to 189 both inclusive. Sections 386, 388, and 389.
No. 1269	<i>The Companies Act Amendment Act, 1892</i>	The whole Act.
No. 1290	<i>The Trusts Act, 1893</i>	The whole Act.
No. 1380	<i>The Companies Documents Act, 1895</i>	The whole Act.
No. 1421	<i>The Trusts Act, 1896</i>	Section 8.
No. 1442	<i>The Companies Act Amendment Act, 1896</i>	The whole Act.

Number of Act.	Short title.	Extent of Repeal.
No. 1482	<i>The Companies Act, 1896</i>	The whole Act except Division I. which is not repealed so far as it applies to any company existing at the commencement of this Act and except Divisions II, and VI. which are repealed only so far as they relate to companies under this Act or Part I. of the <i>Companies Act, 1890</i> , or Division I. or Division III. of the <i>Companies Act, 1896</i> .
No. 1488	An Act to amend the <i>Companies Act, 1896</i>	The whole Act
No. 1502	An Act to remove certain doubts as to the operation of Section 31 of the <i>Companies Act, 1896</i>	The whole Act.
No. 1541	<i>The Defunct Companies Act, 1897</i>	The whole Act.
No. 1645	<i>The Companies Act, 1900</i>	The whole Act.
No. 1699	<i>The Companies Act, 1900</i>	Sections 10, 11, 12, 13, 14, 15, 16, and 17.
No. 1886	<i>The Companies Act, 1903</i>	Sections 2, 3, 5, and 6
No. 2039	<i>The Companies Act, 1906</i>	The whole Act.
No. 2079	<i>The Companies Act, 1907</i>	The whole Act.
No. 2156	<i>The Companies Names Act, 1908</i>	The whole Act.
No. 2203	<i>The Companies Names Act, 1909</i>	The whole Act.

Table

Showing how Sections of Acts Consolidated have been dealt with.

Sections of Repealed Acts.	Sections of Companies Act, 1910.	Remarks.
<i>Companies Act, 1890</i>		
1	—	Short title, commencement, and division.
2	—	Repeal and saving clause.
3	8	Amended.
4	9	Amended.
5 }	10	Amended.
6 }	11	Amended.
7 }	48	Amended.
8 }	12	Amended.
9 }	13	Amended.
10 }	14 }	Amended.
11 }	22 }	
12 }	15 }	Amended by No. 1482. Further amended.
13 }	48 }	
14 }	18	Amended.
15 }	19	Amended.
16 }	20 }	Amended.
17 }	22 }	
18 }	23 }	Amended.
19 }	239 }	
20 }	24	Amended.
21 }	238	Amended.
22 }	26	Amended.
23 }	16	Amended.
24 }	29	Amended.
25 }	31	Amended.
26 }	36	Amended.
27 }	32	Amended.
28 }	33	Amended.
29 }	49	Amended.
30 }	50	Amended.

Sections of Repealed Acts.	Sections of Companies Act, 1910.	Remarks.
<i>Companies Act, 1890, —continued.</i>		
31	34	Amended.
32	30	Amended.
33	37	Amended.
34	38	Amended.
35	51	Amended.
36 }	39	Amended.
37 }		
38	40	Amended.
39	132	Amended.
40	69	Amended.
41 }	70	Amended.
42 }		
43 {	108 }	Amended.
44 {	109 }	
45 }	116	Amended.
46 }	82	Amended.
47 }		
48	83	Amended.
49	84	Amended.
50	124	Amended.
51	71	Amended.
52	21	Amended.
53	76	Amended.
54 }	74	Amended.
55 }		
56 }	77	Amended.
57 }	85	Amended.
58 }		
59 }	117	Amended.
60 }		
61	118	Amended.
62	119	Amended.
63	125	Amended.
64	—	Not re-enacted. (See No. 1058, sec. 14.)
65	126	Amended.
66	286	Amended.
67 {	78 }	Amended.
68 }	81 }	
69	287	Amended.
70	—	Not re-enacted.
71	127	Amended.
72	133	Amended.
73	134	Amended.
74	135	Amended.
75	136	Amended.
76	—	Not re-enacted.
77	137	Amended.
78 {	138	Amended.
79 }	139 }	
80	140 }	Amended.
81	141 }	
82	142	Amended.
83	143	Amended.
84	144	Amended.
85	145	Amended.
86	146	Amended.
87	132 (3) 134	Amended.
88	147	Amended. (And see No. 1482, sec. 149.)
89 {	—	Repealed by No. 1482.
90 }	148	Amended.
	151 }	Amended.
	154 }	
	155	Amended.

Sections of Repealed Acts.	Sections of Companies Act, 1910.	Remarks.
<i>Companies Act, 1890,</i> <i>—continued.</i>		
91	155	Amended.
92	—	Repealed by No. 1482
93 }		
94 }	165	Amended.
95	166	Amended.
96	167	Amended.
97	168	Amended.
98 }		
99 }	169	Amended.
100	135 (3)	Amended.
101	170	Amended.
102	171	Amended.
103	172	Amended.
104	173	Amended.
105 }		
106 }	174	Amended.
107 }		
108	—	Not re-enacted.
109 }		
110 }	176	Amended.
111	178	Amended.
112	179	Amended.
113	224 (1, 2, 3)	Amended.
114	182	Amended.
115	76	Amended.
116	183	Amended.
117	184	Amended.
118	185	Amended.
119	186	Amended.
120 }	132 (3) }	Amended.
121 }	134 }	
122 }	191	Amended.
123 }	192	Amended.
124	194	Amended.
125	195	Amended.
126	190	Amended.
127	186 (viii.) (ix.)	Amended.
128 }		
129 }	190 (1, 2, 3, 4, 5)	Amended.
130	197	Amended.
131	198	Amended.
132	199	Amended.
133	200	Amended.
134	201	Amended.
135	202	Amended.
136	203	Amended.
137	204	Amended.
138	205	Amended.
139	218	Amended.
140	—	Repealed by No. 1482.
141	219	Amended.
142	—	Not re-enacted.
143	206	Amended.
144 }		
145 }	212	Amended.
146 }		
147 }		
148 }	193	Amended.
149 }		
150	210	Amended.
151	209	Amended.
152	—	Repealed by No. 1482.
153	214	Amended.

Sections of Repealed Acts.	Sections of Companies Act, 1910.	Remarks.
<i>Companies Act, 1890,</i> <i>—continued.</i>		
154 }	215	Amended.
155 }		
156 }	216	Amended.
157 }		
158 }	228	Amended.
159 }		
160 }	243	Amended.
161 }		
162 }	244	Amended.
163 }	245	Amended.
164 }	246	Amended.
165 }	247	Amended.
166 }	246	Amended.
167 }	248	Amended.
168 }	249	Amended.
169 }	250	Amended.
170 }	251	Amended.
171 }	252	Amended.
172 }	253	Amended.
173 }	—	Not re-enacted. (See ss. 24 and 25.)
174 }	254	Amended.
175 }	255	Amended.
176 }	256	Amended.
177 }	257	Amended.
178 }	259	Amended.
179 }	260	Amended.
180 }	261	Amended.
181 }	262	
182 }		
183 }	27	Amended.
184 }		
185 }	263 }	Amended.
186 }	264 }	
187 }	265	Amended.
188 }	266	Amended.
189 }	267	Amended.
386 }	268	Amended.
388 }	269	Amended.
389 }	—	Not re-enacted.
387 }		
No. 1269.		
1	—	Short title and construction.
2	—	Repeal.
3 }		
4 }	129	Amended.
5 }		
7 }		
7 }	131	Amended.
8 }		
9	—	Repealed by No. 1482.
No. 1290.		
1	—	Short title and construction.
2	34 (1)	Amended.
3	34 (4)	Amended.
No. 1380.		
1	—	Short title.
2 }		
3 }		
4 }	272	
5 }		
6 }		
7 }		

Sections of Repealed Acts.	Sections of Companies Act, 1910.	Remarks.
No. 1421.		
8	34 (2)	Amended.
No. 1442.		
1	—	Short title.
2	—	Not re-enacted. (See sec. 129.)
3	—	Not re-enacted.
No. 1482.		
1	—	Short title and construction, citation, and non-application.
2 {	130 {	Amended.
3	8 }	Repeal.
4 }	—	
5 }		
6 }		
7 }		
8 }		
9 }		
10 }		
11 }	—	Not re-enacted.
12 }		
13 }		
14 }		
15 }		
16 }		
17 }		
18 }		
19 }		
No. 1482— <i>continued</i> .		
20	—	Not re-enacted. Continued except as to Trading Companies, see sec. 2 and fourth Schedule.
21	95	Amended.
22	33	Amended.
23 {		
24 }	115	Amended.
25 }		
26 }		
27	—	Not re-enacted.
28	121	Amended.
29	—	Not re-enacted.
30	120	Amended.
31	123	Amended.
32 {		
33 }	121	Amended.
34	121	Amended.
35	—	Not re-enacted.
36	—	Not re-enacted.
37	—	Not re-enacted.
38	—	Not re-enacted.
39	—	Not re-enacted.
40	—	Not re-enacted.
41	—	Not re-enacted.
42	—	Not re-enacted.
43	—	Not re-enacted.
44	273	
45	274	
46	275	
47	276	
48	277	
49	278	
50	280	
51	281	
52	238 (2)	

Sections of Repealed Acts.	Sections of Companies Act, 1910.	Remarks.
No. 1482— <i>continued</i> .		
53 }	101	Amended by No. 1886. Further amended.
54 }		
55	72	Amended.
56	73	Amended.
57	77	Amended.
58	93	Amended.
59	96	Amended.
60	27 (5)	Amended.
61 }	41	Amended.
62 }		
63 }		
64 }		
65 }	42	Amended.
66 }		
67 }		
68 }		
69	43	Amended.
70	70	Amended.
71	—	Not re-enacted.
72	—	Not re-enacted.
73	—	Not re-enacted.
74	—	Not re-enacted. See sec. 270 (3).
75	270 (12)	
76	—	Not re-enacted.
77 }		
78 }	17	Amended.
79 }		
80 }		
81	—	Not re-enacted
82 }	17	Amended.
83 }		
84	15	Amended.
85	—	Not re-enacted.
86	—	Not re-enacted.
87	—	Not re-enacted.
88 }	53 }	Amended.
	55 }	
89 }	54 }	Amended.
	57 }	
90	56	Amended.
91	56	Amended.
92	58	Amended.
93 }	59	Amended.
95 }		
94	60	Amended.
96	61	Amended.
97	—	Not re-enacted.
98	48 (e)	Amended.
99	—	Not re-enacted.
100	62	Amended.
101	—	Not re-enacted.
102	—	Not re-enacted. Continued except as to Trading Companies, see sec. 2 and fourth Schedule.
102	—	Not re-enacted.
103	87	Amended.
104	88	Amended.
105	—	Not re-enacted.
106	—	Not re-enacted.
107	91	Amended.
108	79	Amended.
109	80	Amended.
110 }	92	Amended.
111 }		

Sections of Repealed Acts.	Sections of Companies Act, 1910.	Remarks.
No. 1482— <i>continued</i> .		
112	—	Not re-enacted.
113	—	Not re-enacted.
114	—	Not re-enacted.
115	—	Not re-enacted.
116	—	Not re-enacted.
117	—	Not re-enacted.
118	—	Not re-enacted.
119	—	Not re-enacted.
120	—	Not re-enacted.
121	—	Not re-enacted. See sec. 131 (3).
122	—	Not re-enacted.
123	224 (4)	
124 {	194 (1) }	Amended.
125	259 }	Not re-enacted.
126	—	Not re-enacted.
127	—	Not re-enacted. See sec. 151.
128	—	Not re-enacted.
129	163	Amended.
130	150	Amended.
131	152	Amended.
132	153	Amended.
133	177	Amended.
134	162	Amended.
135	213	Amended.
136 }		
137 }	156	Amended.
138	155	Amended.
139	222	Amended.
140	226	
141	157	Amended.
142	158	Amended.
143	159	Amended.
144 }		
145 }	160	Amended.
146	161	Amended.
147	220	Amended.
148	208	Amended.
149	175	Amended.
150	—	Not re-enacted. See sec. 229.
151	—	Not re-enacted.
152	—	Not re-enacted.
153	—	Repealed by No. 1699.
154	—	Not re-enacted.
155	237 (2)	Amended.
156 }		
157 }		
158 }		
159 }	230	Amended.
160 }		
161 }		
162	196 (6)	
163	—	Not re-enacted.
164	—	Not re-enacted. See ss. 24 and 25.
165	—	Not re-enacted.
166	82	Amended.
167	35 (2)	
168	284	
169	35 (1)	Amended.
170	291	
171	292	Amended.
172	294	Amended.
173	285	Amended.
174	—	Not re-enacted.
175	289	

Sections of Repealed Acts.	Sections of Companies Act, 1910.	Remarks.
No. 1482— <i>continued</i> . 176	130 (7)	
No. 1488. 1	—	Not re-enacted. See sec. 123.
2	—	Not re-enacted.
No. 1502. 1 } 2 } 3 } 4 }	—	Not re-enacted. See sec. 123.
No. 1541. 1	—	Short title and construction. Interpretation.
2	—	
3	231	
4	232	
5	233	
6	234	
7	235	
8	236	
9	237	
No. 1645. 1	—	Short title and construction.
2	—	Not re-enacted. See sec. 229.
3	—	Not re-enacted.
4	—	Not re-enacted.
5	—	Not re-enacted.
No. 1699. 10	27 (6)	Amended.
11	—	Not re-enacted.
12	—	Not re-enacted. See ss. 115 and 121.
13	—	Not re-enacted. See sec. 101.
14	283	Amended.
15	33 (5)	Amended.
16	—	Not re-enacted.
17	—	Not re-enacted.
No. 1886. 2	101 (10) } (5) }	Amended.
3	—	Not re-enacted.
5	130 (1)	Amended.
6	157	Amended.
No. 2039. 2 } 3 } 4 } 5 }	86	Amended.
No. 2079. 1	—	Short title and citation.
2	—	Repeal.
3 } 4 }	—	Not re-enacted. See sec. 123.
No. 2156. 2	279	
No. 2203. 2	279	

3. Tasmania. a) 33 Vic. No. 22. An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations (22d October, 1869).

Preliminary.

Short title. 1. This Act may be cited for all purposes as *The Companies Act, 1869*. — The provisions of the *Bills of Sale Act, 1896* (60 Vic. No. 52) and the *Bills of Sale Act, 1900*, (64 Vic. No. 70) do not apply to debentures issued by any company registered under this Act. — e. (6 Edw. 7, No. 25) § 5, *infra*.

Commencement of Act. 2. This Act shall not come into operation until the first day of January, One thousand eight hundred and seventy, and the time at which it so comes into operation is hereinafter referred to as the commencement of this Act.

Definition of insurance company. 3. For the purposes of this Act a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company.

Prohibition of partnerships exceeding certain number. 4. No company, association, or partnership consisting of more than ten persons shall be formed in this Colony after the commencement of this Act, for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of the Parliament of Tasmania, or of Letters Patent; and no company, association, or partnership consisting of more than twenty persons shall be formed in this Colony after the commencement of this Act, for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof unless it is registered as a company under this Act, or is formed in pursuance of some other Act of the Parliament of Tasmania, or of Letters Patent. — E. § 1; N. S. W. a. (No. 40 of 1899) 4 (1); V. a. (No. 1074) 4; S. A. a. (No. 557) 7; Q. e. (27 Vic. No. 4) 3; W. A. a. (56 Vic. No. 8) 7; N. Z. 5. — The prohibition against partnerships consisting of more than a certain number of person applies also to limited partnerships. — *The Limited Partnerships Act, 1908*, (8 Edw. 7, No. 6) § 4 (2).

Division of Act. 5. This Act is divided into nine Parts, relating to the following subject matters: (Here follows an analysis of the Act.)

Part I. Constitution and Incorporation of Companies and Associations under this Act. Memorandum of association.

6. = N. S. W. a. (No. 40 of 1899) § 5, except: "of this Part" is omitted.

7. = N. S. W. a. (No. 40 of 1899) § 6, except: "or registered" and "Part of this" are omitted; "to" is inserted before "such amount".

Memorandum of association of a company limited by shares. 8. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things: that is to say, 1. The name of the proposed company, with the addition of the word "limited" as the last word in such name. 2. The place where the registered office of the company is proposed to be situate. 3. The objects for which the proposed company is to be established. 4. A declaration that the liability of the members is limited. 5. The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount. Subject to the following regulations: 1. That no subscriber shall take less than one share. 2. That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes. — E. § 3; N. S. W. a. (No. 40 of 1899) 7; V. a. (No. 1074) 7; S. A. a. (No. 557) 11, 12; Q. e. (27 Vic. No. 4) 7; W. A. a. (56 Vic. No. 8) 11, 13; N. Z. 15, 18.

Memorandum of association of a company limited by guarantee. 9. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things: that is to say 1. The name of the proposed company, with

the addition of the word "limited" as the last word in such name. 2. The place where the registered office of the company is proposed to be situate. 3.—4. = N. S. W. a. (No. 40 of 1899) 8 (c—d). — E. § 4; N. S. W. a. (No. 40 of 1899) 8; V. a. (No. 1074) 10; Q. e. (27 Vic. No. 4) 8; N. Z. 16, 18.

Memorandum of association of an unlimited company. 10. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things: that is to say 1. The name of the proposed company. 2. The place where the registered office of the company is proposed to be situate. 3. The objects for which the proposed company is to be established. — E. § 5; N. S. W. a. (No. 40 of 1899) 9; V. a. (No. 1074) 11; S. A. a. (No. 557) 11; Q. e. (27 Vic. No. 4) 9; W. A. a. (56 Vic. No. 8) 11; N. Z. 17.

Stamp, signature, and effect of memorandum of association. 11. The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act.

Power of certain companies to alter memorandum of association. 12. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock, but, save as aforesaid, and save as is hereinafter provided in case of a change of name, no alteration shall be made by any company in the conditions contained in its memorandum of association. — E. § 7; N. S. W. a. (No. 40 of 1899) 11; V. a. (No. 1074) 13; f. (No. 1482) 51; S. A. a. (No. 557) 14 (2); Q. e. (27 Vic. No. 4) 11; W. A. a. (56 Vic. No. 8) 15; N. Z. 42. — Cp. c. (59 Vic. No. 19) § 5, *infra*.

Power of companies to change name. 13. Any company under this Act, with the sanction of a special resolution of the company passed in manner hereinafter mentioned, and with the approval of the Governor testified in writing under the hand of the Colonial Secretary, may change its name, and upon such change being made the Registrar shall enter the new name on the Register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name. — E. § 8; N. S. W. a. (No. 40 of 1899) 225; V. a. (No. 1074) 22; S. A. a. (No. 557) 65; Q. e. (27 Vic. No. 4) 12; W. A. a. (56 Vic. No. 8) 67; N. Z. 160.

Articles of association.

Regulations to be prescribed by articles of association. 14. The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient. The articles shall be expressed in separate paragraphs, numbered arithmetically, and may be either written or printed. They may adopt all or any of the provisions contained in the Table marked A in the first Schedule hereto. They shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration. In a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take

one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes. — E. §§ 4 (2), 5 (2), 10, 12; N. S. W. a. (No. 40 of 1899) 12; V. a. (No. 1074) 14; S. A. a. (No. 557) 15; Q. e. (27 Vic. No. 4) 13; W. A. a. (56 Vic. No. 8) 16; N. Z. 22.

15. = N. S. W. a. (No. 40 of 1899) § 13, except: "first Schedule" is substituted for "second Schedule".

16. = N. S. W. a. (No. 40 of 1899) § 14, except: no division into paragraphs; "they shall bear the same stamp as if they were contained in a deed" is inserted after "shall be printed"; "and" is inserted before "all moneys"; "such conditions" is substituted for "the conditions"; "deemed to be a debt due from such member to the company in the nature of a specialty debt" is substituted for "deemed to be a specialty debt". — Cp. c. (59 Vic. No. 19) § 4, *infra*.

General provisions.

17. = V. a. (No. 1074) § 17, except: "Registrar" is substituted for "Registrar-General" in both instances; "Table marked B in the first Schedule" is substituted for "third Schedule"; "or such smaller fees as the Governor in Council may from time to time direct" is inserted before "and by a company"; "Table marked C in the first Schedule" for "fourth Schedule"; "in either case" is omitted; the following is inserted at the end of the section; "All fees paid to the Registrar in pursuance of this Act shall be paid into the Colonial Treasury and form part of the General Revenue".

18. = N. S. W. a. (No. 40 of 1899) § 16, except: "this Part of" is omitted in both instances; "and to sue and be sued in all courts" is omitted.

19. = V. a. (No. 1074) § 20, except: "the same being either written or printed, if any, shall be forwarded to every member at his request on payment of the sum of one shilling, or such less sum as may be prescribed by the company for each copy" is substituted for the words from "if any" to "annex as aforesaid".

20. = V. a. (No. 1074) § 21, except: throughout "Registrar" is substituted for "Registrar-General"; "in the opinion of the Registrar-General" is omitted; "issue a certificate of incorporation" is substituted for "publish a notice of incorporation".

Part II. Prospectus; Distribution of Capital and Liability of Members of Companies and Associations under this Act. Prospectus.

21. = N. S. W. a. (No. 40 of 1899) § 66, except: "formed under this Part of this Act" is omitted; "the dates and the names of the parties to any contract" is substituted for "the names of the parties to and the date of any contract".

Distribution of capital.

22. = V. a. (No. 1074) § 23, except: "this Part of" is omitted.

23. = N. S. W. a. (No. 40 of 1899) § 18, except: "Part of this" is omitted in both places where it occurs.

24. = V. a. (No. 1074) § 25, except: "this Part of" is omitted.

25. = N. S. W. a. (No. 40 of 1899) § 19, except: "every company under this Act" is substituted for "every company formed or registered under this Part of this Act"; in lieu of (2) the following is inserted: "And any company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues, and every director or manager of the company who knowingly and wilfully authorises or permits such contravention shall incur the like penalty".

26. = V. a. (No. 1074) § 27, except: "this Part of" is omitted; "Registrar" is substituted for "Registrar-General".

27. = V. a. (No. 1074) § 28, except: "this Part of" is omitted in both places where it occurs; "Registrar" is substituted for "Registrar-General"; "the like penalty" is substituted for "a like penalty".

28. = N. S. W. a. (No. 40 of 1899) § 22, except: "every company under this Act" is substituted for "every company formed or registered under this Part of this Act".

29. = N. S. W. a. (No. 40 of 1899) § 23, except: "under this Act and" is substituted for "formed or registered under this Part of this Act"; "of this Part" is omitted after "provisions"; "on the list" is substituted for "in the list".

30. = V. a. (No. 1074) § 8.

31. = V. a. (No. 1074) § 9, except: "as in the last section mentioned" is inserted after "special resolution".

32. = N. S. W. a. (No. 40 of 1899) § 237.

33. = N. S. W. a. (No. 40 of 1899) § 238, except: "a company" is substituted for "any company registered under this Act"; "share or" is inserted before "shares" in both cases.

34. = V. a. (No. 1074) § 33, except: "and" is omitted before "except when closed"; "it" is inserted after "hereinafter mentioned", and "of the Supreme Court" after "any judge".

35. = V. a. (No. 1074) § 34, except: "this Part of" is omitted; "some newspaper circulating in the locality in which" is substituted for "two newspapers published nearest to".

Notice of increase of capital and of members to be given to Registrar. 36. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and in the case of an increase of members within fifteen days from the time at which such increase of members has been resolved on or has taken place, and the Registrar shall forthwith record the amount of such increase of capital or members. If such notice is not given within the period aforesaid the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues, and every director and manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty. — E. § 44; N. S. W. a. (No. 40 of 1899) 24; V. a. (No. 1074) 35; S. A. a. (No. 557) 75; Q. e. (27 Vic. No. 4) 33; W. A. a. (56 Vic. No. 8) 77; N. Z. 43.

37. = V. a. (No. 1074) § 36, except: the beginning word is "if" instead of "when"; "this Part of" is omitted; "of the Supreme Court" is inserted after "application to a judge"; "or in such other manner as the said Court may direct" is inserted after "chambers"; "or Judge" is omitted before "may either refuse" and before "may in any proceeding"; "application or petition" is substituted for "or application"; "the Court" is inserted between "generally" and "may"; "provided that the Supreme Court may direct an issue to be tried in which any question of law may be raised in the manner directed by *The Common Law Procedure Act No. 2*" is substituted for the sentence beginning with "may direct an issue" to end of section. — E. § 32; N. S. W. a. (No. 40 of 1899) 232 (1—3); V. a. (No. 1074) 36; S. A. a. (No. 557) 35; Q. e. (27 Vic. No. 4) 34; W. A. a. (56 Vic. No. 8) 36; N. Z. 106—107. — For a case in which under the facts a shareholder was held entitled to have his name struck from the register of shareholders, because of variations between the prospectus and the memorandum of association and articles of association, see *Re Tasmanian Fruitgrowers, etc., Co., Ltd.*, (1905) L. R. (Tas.) 30. *Cp. Re Long Tunnel Prospecting Syndicate, No-Liability*, (1905) L. R. (Tas.) 49.

38. = V. a. (No. 1074) § 37, except: the beginning word is "whenever" instead of "when"; in both instances "Registrar" is substituted for "Registrar-General".

39. = V. a. (No. 1074) § 38, except: "any matters by this Act" is substituted for "all matters by this Part of this Act".

Liability of members.

40. = N. S. W. a. (No. 40 of 1899) § 33, except: "formed under this Act" is substituted for "formed or registered under this Part of this Act"; in (a) "to the assets of the company" is inserted after "contribute"; in (c) "to the assets of the company" is inserted after "contribute", and "or other authority, in, by, or under which the company is being wound up" is omitted; in (e) "contribution" is substituted for "contributions".

Calls upon shares.

Company may have some shares fully paid and others not. 41. Notwithstanding anything in this Act contained, it shall be lawful for any company, if authorised by its regulations as originally framed, or as altered by special resolution, to do any one or more of the following things: namely: 1. To make arrangements on

the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls. 2. To accept from any member of the company who assents thereto, the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made. 3. To pay dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others. — E. § 39; N. S. W. a. (No. 40 of 1899) 54; S. A. a. (No. 557) 79; Q. f. (53 Vic. No. 18) 27; W. A. a. (56 Vic. No. 8) 81; N. Z. 36.

Manner in which shares to be issued and held. 42. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing, and filed with the Registrar at or before the issue of such shares. — N. S. W. a. (No. 40 of 1899) 55; S. A. a. (No. 557) 25; Q. f. (53 Vic. No. 18) 28; W. A. a. (56 Vic. No. 8) 26.

Part III. Management and Administration of Companies and Associations under this Act. Provision for protection of creditors.

Registered office of company. 43. Every company under this Act shall have a registered office to which all communications and notices may be addressed. If any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on. — E. § 62; N. S. W. a. (No. 40 of 1899) 231; V. a. (No. 1074) 40; S. A. a. (No. 557) 38 (2); Q. e. (27 Vic. No. 4) 39, f. (53 Vic. No. 18) 33; W. A. a. (56 Vic. No. 8.) 39 (2); N. Z. 125.

Notice of situation of registered office. 44. Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar, and recorded by him. Until such notice is given the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office. — See note to preceding section.

45. = V. a. (No. 1074) § 41, except: "this Part of" is omitted.

46. = V. a. (No. 1074) § 42, except: "this Part of" is omitted in both places where it occurs; "or" is omitted before "indorsement".

47. = V. a. (No. 1074) § 43, except: "this Part of" is omitted.

[§ 48 relates to the publication of statements by banking, insurance, deposit, provident, and benefit companies or societies.]

49. = N. S. W. a. (No. 40 of 1899) § 70, except: "under this Act and" is substituted for "formed or registered under this Part of this Act".

50. = V. a. (No. 1074) § 46, except: "this Part of" is omitted; "Registrar" is substituted for "Registrar-General" in both places where it occurs.

51. = V. a. (No. 1074) § 48, except: "this Part of" is omitted.

52. = V. a. (No. 1074) § 49, except: "this Part of" is omitted; "seven" is substituted for "five" in both places where it occurs; "or suit" is inserted after "action".

Provisions for protection of members.

Company to hold meeting within six months after registration. 53. Every company under this Act shall hold a general meeting within six months after its memorandum of association is registered; and if such meeting is not held, the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such six months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorises or permits such default shall be liable to the same penalty. — E. § 65; N. S. W. a. (No. 40 of 1899) 242; V. f. (No. 1482) 55 (1, 8); S. A. a. (No. 557) 47; Q. f. (53 Vic. No. 18) 34; W. A. a. (56 Vic. No. 8) 49; N. Z. 87.

54. = N. S. W. a. (No. 40 of 1899) § 246, except: "registered" is omitted; "the" is inserted before "least".

55. = N. S. W. a. (No. 40 of 1899) § 72, except: "first Schedule" is substituted for "second Schedule"; "under this Part" is omitted after "found"; "and" is inserted after "regulations of the company".

56. = N. S. W. a. (No. 40 of 1899) § 247, except: no division into paragraphs; throughout "rules or" is omitted before "regulations"; "registered" is omitted before "under this Act".

57. = V. a. (No. 1074) § 53, except: "first Schedule" is substituted for "second Schedule"; "shall be competent to summon the same" for "may summon the same"; and "it shall be competent for any person elected by the members to preside" for "any person elected by the members present may preside".

58. = V. a. (No. 1074) § 54, except: "a copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the Registrar" is substituted for "when any special resolution is passed by any company under this Part of this Act" to "Registrar-General"; "incur the like" is substituted for "be liable to a like".

59. = N. S. W. a. (No. 40 of 1899) § 250, except: no division into paragraphs; throughout "or rules" is omitted after "association"; "that" is substituted for "which" before "may be issued"; "and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty" is substituted for (3).

60. = N. S. W. a. (No. 40 of 1899) § 241, except: "registered" is omitted before "under this Act"; in (1) "and" is omitted before "under seal"; in (2) "parties" is substituted for "party"; in (3) "manner" is substituted for "way", and "their successors" for "its successors".

61. = V. a. (No. 1074) § 56, except: "this Part of" is omitted; "this Colony" is substituted for "Victoria".

62. = N. S. W. a. (No. 40 of 1899) § 252, except: "the Supreme Court or any Judge thereof" is substituted for "the Governor"; "competent" is inserted before "inspectors"; "registered" is omitted; "the Court or Judge" is substituted for "the Governor".

63. = N. S. W. a. (No. 40 of 1899) § 253, except: no division into paragraphs; "Court or Judge" is substituted for "Governor" in both instances; "or inspectors" is added after "inspector".

64. = N. S. W. a. (No. 40 of 1899) § 254, except: "it shall be the duty of" is inserted before "all officers and agents"; "to produce" is substituted for "shall produce"; "and" is omitted before "any inspector".

Result of examination how dealt with. 65. Upon the conclusion of the examination the inspectors shall report their opinion to the said Court or any Judge thereof. Such report shall be written or printed, as the Court or Judge directs. A copy shall be forwarded by the clerk of the Court to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered by the clerk of the Court to them or to any one or more of them. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the said Court or Judge directs the same to be paid out of the assets of the company, which the Court or Judge is hereby authorized to do. — E. § 109; N. S. W. a. (No. 40 of 1899) 255; V. a. (No. 1074) 60; S. A. a. (No. 557) 57; Q. e. (27 Vic. No. 4) 59; W. A. a. (56 Vic. No. 8) 59; N. Z. 143 (4—7).

66. = N. S. W. a. (No. 40 of 1899) § 256, except: "registered" is omitted before "under this Act"; "and" is omitted between "company" and "the inspectors"; "the said Court or Judge thereof with this exception that" is substituted for "the Governor but"; "said Court or Judge" is substituted for "the Governor"; "and" is inserted before "the officers and agents"; at the end of the section "said Court or any Judge thereof" is substituted for "Governor".

67. = N. S. W. a. (No. 40 of 1899) § 257.

Notices.

68. = V. a. (No. 1074) § 63, except: "required to be served" is substituted for "requiring to be served".

69—70. = V. a. (No. 1074) § 64—65.

Legal proceedings.

71. = N. S. W. a. (No. 40 of 1899) § 258, except: "in the mode prescribed by *The Magistrates Summary Procedure Act*" is substituted for "of the peace".

Application of penalties. 72. The Justices imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment

of the cost of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered; and, subject to such direction, all penalties shall be paid into the Colonial Treasury and form part of the General Revenue.

73. = N. S. W. a. (No. 40 of 1899) § 260, except: no division into paragraphs; "registered" is omitted before "under this Act"; "and" is inserted before "any such minute", before "until the contrary", and before "all appointments".

Provision as to costs in actions brought by certain limited companies. 74. Where a limited company is plaintiff in any action, suit, or other legal proceeding, any Judge or Court having jurisdiction in the matter may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

75. = N. S. W. a. (No. 40 of 1899) § 73, except: "hath accrued" is substituted for "has accrued", and "brought by the company" for "brought by a company".

Alteration of forms.

[§ 76 empowers the Governor in Council to alter the forms in the Schedules contained.]

Arbitrations.

[§§ 77—105 relate to the submission to arbitration of all existing and future disputes between a company and other persons, provide for the method of appointment of arbitrators and umpires, and for the procedure before such arbitrators.]

Part IV. Winding-up of Companies and Associations under this Act.¹ Preliminary.

106. = N. S. W. a. (No. 40 of 1899) § 79 (1), except: "company under this Act" is substituted for "company formed or registered under this Part of this Act"; "it shall also" is substituted for "and shall also"; "such persons" is substituted for "such proceedings".

107. = V. a. (No. 1074) § 72, except: "debt of the nature of a specialty" is substituted for "specialty debt", and "liability to future calls" for "liabilities to future calls".

108. = V. a. (No. 1074) § 73, except: the beginning word is "if" instead of "where".

109. = N. S. W. a. (No. 40 of 1899) § 82, except: "or person deemed to be a contributory" is omitted; throughout "insolvent" is substituted for "bankrupt"; "or trustee" is omitted.

110. = N. S. W. a. (No. 40 of 1899) § 83, except: "or female deemed to be a contributory" is omitted.

Winding up by Court.

Circumstances under which company may be wound up by Court. 111. A company under this Act may by² wound up by the Court as hereinafter defined, under the following circumstances; that is to say: 1—5. = N. S. W. a. (No. 40 of 1899) § 84 (a—e). — E. § 129; N. S. W. a. (No. 40 of 1899) 84; V. a. (No. 1074); 76; S. A. a. (No. 557) 105; Q. e. (27 Vic. No. 4) 78; W. A. a. (56 Vic. No. 8) 107; N. Z. 87. See also c. (59 Vic. No. 19) § 20, *infra*.

112. = N. S. W. a. (No. 40 of 1899) § 86 (a—c), except: the introductory paragraph reads: "a company under this Act shall be deemed to be unable to pay its debts"; in (b) "at law or in equity" is inserted after "any creditor".

Definition of "the Court". 113. The expression "the Court", as used in this Part of this Act, shall mean the Supreme Court in its Equity Jurisdiction.

114. = N. S. W. a. (No. 40 of 1899) § 89, except: no division into paragraphs; "this Part of" is inserted after "under"; "it may" is substituted for "and such petition"; "any one or more creditor or creditors, contributory or contributories" is substituted for "creditor or contributory"; "and" is inserted before "every order".

115. = N. S. W. a. (No. 40 of 1899) § 90, except: "this Part of" is omitted; "unless" is inserted before "the shares in respect of"; "holder" is substituted for

¹) See further as to winding-up c. (59 Vic. No. 19) § 11—26, *infra*. — ²) *Sic*; obviously "be".

“owner”; “provided that” is inserted before “where”; “by” or in the name of any trustee or trustees” is substituted for “any trustee”; no division into paragraphs.

The Judge may exercise powers of the Court, subject to reversal by full Court. Registrar may exercise certain powers. 116. Any Judge of the Supreme Court, separately, and apart from the other Judge or Judges thereof, in chambers or otherwise, may exercise the same powers with respect to winding up any company under the provisions of this Act as are vested in the Court by this Act; and all orders, decrees, declarations, and acts of any such Judge shall respectively be deemed to be orders, decrees, declarations, and acts, as the case may be, of the Court, and shall have force and validity and be executed accordingly, subject nevertheless in every case to be reserved, discharged, or altered by the full Court, within such time and under such regulations and conditions as may be prescribed in that behalf by any general rule or order of the Court; and the Registrar of the Court may, subject to exception or appeal to the Court, do and exercise such acts and powers in the matter of winding-up as may be prescribed in that behalf by any general rule or order of Court. — Cp. note to N. S. W. a. (No. 40 of 1899) § 78.

117. = N. S. W. a. (No. 40 of 1899) § 91.

118. = V. a. (No. 1074) § 80, except: “this Part of” is omitted; “the Court may also” is substituted for “and may also”, “appoint” for “nominate”, and “appointment” for “nomination”.

119. = N. S. W. a. (No. 40 of 1899) § 93, except: “or” is omitted before “may adjourn”.

120. = V. a. (No. 1074) § 82, except: “this Part of” is omitted; “proceeded with” is substituted for “continued”.

121. = N. S. W. a. (No. 40 of 1899) § 96, except: “for winding-up a company under this Act” is substituted for “under this Part of this Act for winding-up a company”.

122. = N. S. W. a. (No. 40 of 1899) § 97, except: “by motion” is inserted after “application”; “that Court” is substituted for “the Court”.

123. = N. S. W. a. (No. 40 of 1899) § 99, except: the beginning word is “when”; “to” is inserted before “be a debt”.

124. = N. S. W. a. (No. 40 of 1899) § 100.

Official liquidators.

125. = N. S. W. a. (No. 40 of 1899), § 101 except: “a company” is inserted before “and assisting”; “a person or persons to be called an official liquidator or official liquidators” is substituted for “by the Court by which the order of winding up is made persons to be called official liquidators”; “person or” is inserted after “appoint such”; “official liquidator or” is inserted after “fit to the office of”; “being wound up” is inserted after “property of the company”.

126. = N. S. W. a. (No. 40 of 1899) § 102, except: no division into paragraphs.

127. = N. S. W. a. (No. 40 of 1899) § 103, except: no division into paragraphs; “or liquidators” is inserted after “liquidator”, and “official liquidators” after “official liquidator”; “or they are” is inserted before “appointed”; “his individual name or names” is substituted for “his individual name”; “he or they shall take into his or their custody, or under his or their control” is substituted for “the official liquidator shall take into his custody or under his control”; “things” is substituted for “choses”.

128. = N. S. W. a. (No. 40 of 1899) § 104, except: in introductory paragraph “do the following things” is inserted after “of the Court to”; each subsection begins with “to”; in (a) “civil or criminal” is inserted after “legal proceeding”; in (c) “and heritable and movable” is inserted after “personal”; in (d) “to” is inserted before “execute”, and “agreements of reference and submissions to arbitration” is omitted; in (e) “bankruptcy or” is omitted in both instances, “bankrupt or” is omitted, and “to” is inserted before “take”; in (f) “also to raise” is substituted for “and raise”, “from time to time any requisite sum or sums” for “any requisite sums”; in (g) “to” is inserted before “do in his official name”, “any other act that” is substituted for “such other acts as” and “which act” is inserted before “can not be conveniently”.

129—130. = N. S. W. a. (No. 40 of 1899) § 105—106.

Ordinary powers of Court.

131. = N. S. W. a. (No. 40 of 1899) § 107, except: "the company is substituted for "a company"; "Part of this" is omitted before "Act"; "shall" is inserted before "cause".

132. = N. S. W. a. (No. 40 of 1899) § 108, except: "liable to the debts" is substituted for "liable for the debts".

133. = N. S. W. a. (No. 40 of 1899) § 109, except: "or any" is omitted before "trustee"; "or into the hands of" is inserted after "as the Court directs to".

134. = N. S. W. a. (No. 40 of 1899) § 110, except: no division into paragraphs; in (1) "winding-up the company" is substituted for "winding-up a company", and "estate of the person whom he represents" for "such estate"; in (2) "and it may in making such order when the company" is substituted for "in making such order when a company"; in (3) the beginning words are "provided that when" instead of the word "when", "any company" is substituted for "a company", and "call or calls" for "calls".

135. = N. S. W. a. (No. 40 of 1899) § 111, except: no division into paragraphs; "and the cost, charges, and expenses of winding it up, and" is substituted for "to satisfy the costs, charges, and expenses of winding-up, and"; in (2) "and it may" is substituted for "the Court may".

136. = N. S. W. a. (No. 40 of 1899) § 112, except: "being wound up" is omitted after "company"; "such bank or any branch thereof as the court directs" is substituted for "a bank to be named by the court".

137. = N. S. W. a. (No. 40 of 1899) § 113, except: "so" is omitted before "paid"; "any bank or any branch thereof as the Court directs in the event of a company being wound up by the Court" is substituted for "such bank".

138. = N. S. W. a. (No. 40 of 1899) § 114.

139. = N. S. W. a. (No. 40 of 1899) § 115, except: "this Part of" is omitted; "rehearing such order" is substituted for "appealing against such order"; at the end of the section the following is inserted: "with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *primâ facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made".

140. = N. S. W. a. (No. 40 of 1899) § 116.

141. = N. S. W. a. (No. 40 of 1899) § 117.

142. = N. S. W. a. (No. 40 of 1899) § 118, except: "being wound up" is omitted before "of the costs"; "any company" is inserted after "winding up"; "of" is substituted for "or".

143. = N. S. W. a. (No. 40 of 1899) § 119, except: "of the company" is substituted for "of a company"; "the company" is substituted for "such company" in both instances.

144. = N. S. W. a. (No. 40 of 1899) § 120.

145. = N. S. W. a. (No. 40 of 1899) § 121, except: "company being wound up" is substituted for "winding-up".

Petition to be lis pendens. 146. Any petition for winding up a company by the Court under this Act shall constitute a *lis pendens* within the terms of the Act of Council, intituled *An Act for the better Protection of Purchasers against Judgments, Crown Debts, and Lis pendens*, provided the same is duly registered in manner required by such Act concerning suits in equity; and a Judge of the Supreme Court may at any time, if he sees fit, make an order vacating the registration of the *lis pendens*, and the same shall be vacated accordingly. — N. S. W. a. (No. 40 of 1899) 122; V. a. (No. 1074) 108; S. A. a. (No. 557) 133; W. A. a. (56 Vic. No. 8) 136; N. Z. 209.

Extraordinary powers of Court.

147. = N. S. W. a. (No. 40 of 1899) § 123, except: no division into paragraphs; in (1) "any" is omitted between "company or" and "person", and "the court" is inserted before "may require"; in (2) "and" is inserted before "if any person", and "time of its sitting" is substituted for "time of sitting"; in (3) "nevertheless" is inserted before "in cases where", and "or" between "deeds" and "writings".

148. = N. S. W. a. (No. 40 of 1899) § 124, except: "by word of mouth" is substituted for "orally".

149. = N. S. W. a. (No. 40 of 1899) § 125, except: "the Colony" is substituted for "New South Wales"; "to such company" is inserted after "any contributory", and "to be safely" is inserted before "kept".

150. = N. S. W. a. (No. 40 of 1899) § 126, except: "this Part of" is omitted before "this Act".

Enforcement of orders.

151. = N. S. W. a. (No. 40 of 1899) § 127, except: "this Part of" is omitted before "this Act"; "in its equity jurisdiction" is inserted before "made".

[§ 152 relates to rehearing of orders in winding-up proceedings.]

[§ 153 requires Courts and Judges to take judicial notice of the signature of any officer of the Supreme Court, and of the official seal of said Court, when appended to any document issued under this Act.]

[§ 154 empowers the Court to appoint commissioners to take evidence in winding-up cases.]

Affidavits, etc. may be sworn in the Colonies, etc. before any competent Court or person. **155.** Any affidavit, affirmation, or declaration required to be sworn or made, under the provisions or for the purposes of this Part of this Act, may be lawfully sworn or made in this Colony, or in any other Colony, or in Great Britain or Ireland, or in any Island, Plantation, or place under the dominion of Her Majesty in foreign parts, before any court, judge, or person lawfully authorised to take and receive affidavits, affirmations, or declarations, or before any of Her Majesty's consuls or vice-consuls, in any foreign parts out of Her Majesty's Dominions, and all courts, judges, justices, commissioners, and persons, acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this Part of this Act. — Cp. note to N. S. W. a. (No. 40 of 1899) § 129.

Voluntary winding up of company.

156. = V. a. (No. 1074) § 114—115, except: in both instances "this Part of" is omitted; throughout "whenever" is substituted for "when"; in § 114 (III.) "their satisfaction" is substituted for "its satisfaction".

157. = N. S. W. a. (No. 40 of 1899) § 131.

158. = N. S. W. a. (No. 40 of 1899) § 132, except: no division into paragraphs; in (2) "and" is inserted before "all transfers" in (3) "but its corporate state" is substituted for "the corporate state", and "its corporate powers" for "the corporate powers"; "of such company" is omitted after "powers".

159. = N. S. W. a. (No. 40 of 1899) § 133.

160. = N. S. W. a. (No. 40 of 1899) § 134, except: in (3) "or persons" is inserted after "persons"; "or a liquidator" is inserted before "and may fix"; "or him" is inserted after "them"; in (7) "this Part of" is omitted before "this Act". — E. § 186; N. S. W. a. (No. 40 of 1899) 134; V. a. (No. 1074) 119; S. A. a. (No. 557) 137, 152; Q. e. (27 Vic. No. 4) 123, h. (56 Vic. No. 24) 21; W. A. a. (56 Vic. No. 8) 141, 155; N. Z. 224, 249. — Where a company received goods from customers for sale on commission, and paid the proceeds of the sales to its own general banking account in such manner that the proceeds so deposited could not be traced or distinguished in the bank account, there was no trust fund out of which the consignors were entitled to payment in preference to other creditors. — *Re The North-western Farmers' Association*, (1906), L. R. (Tas.) 95.

161. = N. S. W. a. (No. 40 of 1899) § 135.

162. = N. S. W. a. (No. 40 of 1899) § 136, except: no division into paragraphs; "may by like resolution" is inserted before "enter"; "and" is inserted before "any Act".

163. = N. S. W. a. (No. 40 of 1899) § 159 (1), except: "wound up voluntarily" is inserted before "or in the course of"; "subject to such right of appeal as herein-after mentioned" is added at the end of the section.

164. = N. S. W. a. (No. 40 of 1899) § 159 (2), except: "in manner aforesaid" is inserted before "entered into"; "such" is omitted before "arrangement with".

165. = N. S. W. a. (No. 40 of 1899) § 137, except: no division into paragraphs; "and" is inserted before (2).

166. = N. S. W. a. (No. 40 of 1899) § 138, except: no division into paragraphs; "from time to time" is inserted after "liquidators may"; "and" is inserted before "in the event of the winding-up".

167. = N. S. W. a. (No. 40 of 1899) § 139, except: no division into paragraphs; "and" is inserted before "a general meeting"; "continuing liquidator" is substituted for "continuing liquidators" before "if any".

168. = N. S. W. a. (No. 40 of 1899) § 140, except: no division into paragraphs; "or liquidators" is inserted before (2).

169. = N. S. W. a. (No. 40 of 1899) § 141, except: no division into paragraphs; "shall be published in the *Gazette* one month at least previously to the meeting" is substituted for the part of the section following "such advertisement".

170. = N. S. W. a. (No. 40 of 1899) § 142, except: no division into paragraphs; "and" is inserted before (2).

171. = N. S. W. a. (No. 40 of 1899) § 143.

172. = N. S. W. a. (No. 40 of 1899) § 144, except: "of such company" is inserted after "any creditor".

173. = N. S. W. a. (No. 40 of 1899) § 145, except: "if it thinks fit" is inserted before "notwithstanding".

Winding-up subject to the supervision of the Court.

174. = N. S. W. a. (No. 40 of 1899) § 146, except: "should continue" is substituted for "shall continue".

175. = N. S. W. a. (No. 40 of 1899) § 147, except: "winding-up subject to" is substituted for "winding-up under".

176. = N. S. W. a. (No. 40 of 1899) § 148, except: no division into paragraphs; "subject to the supervision" is substituted for "under the supervision" in both instances; "liquidator or" is inserted before "liquidators"; "and may direct" is substituted for "the Court may direct".

177. = N. S. W. a. (No. 40 of 1899) § 149, except: no division into paragraphs; "subject to the supervision" is substituted for "under the supervision"; "liquidator or" is inserted after "additional"; "and" is inserted before "any liquidator so appointed".

178. = N. S. W. a. (No. 40 of 1899) § 150, except: no division into paragraphs; "but" is inserted before "save"; "subject to the supervision" is substituted for "under the supervision" in both instances; "deemed to mean" is substituted for "deemed to include"; "and" is inserted before "in the construction".

179. = N. S. W. a. (No. 40 of 1899) § 151, except: "subject to the supervision" is substituted for "under the supervision".

Supplemental provisions.

180. = N. S. W. a. (No. 40 of 1899) § 152, except: "any company" is substituted for "a company"; "subject to the supervision" is substituted for "under the supervision"; "things" is substituted for "choses"; "the company" is substituted for "such company".

181. = N. S. W. a. (No. 40 of 1899) § 153, except: "any company" is substituted for "a company".

182. = N. S. W. a. (No. 40 of 1899) § 154, except: "any company" is substituted for "a company"; "this Part of" is omitted before "this Act"; "where the company" is substituted for "where such company"; "by or subject to" is substituted for "by or under"; "but" is inserted before "after"; "or parties" is inserted after "party"; no division into paragraphs.

183. = V. a. (No. 1074) § 141, except: the beginning word is "where" instead of "when".

184. = N. S. W. a. (No. 40 of 1899) § 156, except: "to the company" is substituted for "to a company"; "this Part of" is omitted before "this Act".

185. = N. S. W. a. (No. 40 of 1899) § 157, except: "any company" is substituted for "a company"; "this Part of" is omitted before "this Act"; "against the" is substituted for "against such" in the first place where these words occur; "it" is omitted after "so far as".

186. = N. S. W. a. (No. 40 of 1899) § 158, except: at the beginning of the section "the company" is substituted for "a company"; throughout "the" is substituted for "such" before "company"; "by the court or subject to" is substituted for "by or under".

[§ 187 is repealed.]

188. = N. S. W. a. (No. 40 of 1899) § 161, except: "where the company is being wound up by the court or subject to" is substituted for "in the case of a winding-up by or under"; in all other instances "the company" is substituted for "such company"; "with power for the liquidators to" is substituted for "the liquidators may"; "the" is substituted for "a" before "company is being wound up".

189. = N. S. W. a. (No. 40 of 1899) § 261, except: no division into paragraphs; "registered under this Act" is omitted; "liquidators" is substituted for "liquidator" throughout; "they were appointed" is substituted for "he was appointed"; "debentures" is omitted throughout; "may" is inserted before "enter into any other arrangement"; "and" is inserted before "any sale"; "this proviso that if" is substituted for "the provisions hereinafter contained"; "either to" is inserted before "abstain"; "under Part one of this Act" is omitted; "to" is inserted before "purchased"; "appointing liquidators" is substituted for "appointing a liquidator".

Mode of determining price. 190. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but if the parties dispute about the same, such dispute shall be settled by arbitration, in the manner hereinafter provided; and any appointment directed to be made under the hand of the manager or secretary of the company, or any two of the directors thereof, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one.

Where questions are to be determined by arbitration arbitrators to be appointed within fourteen days after notice. 191. When any dispute arises as to the price to be paid for the purchase of the interest of any dissentient member, then, unless both parties concur in the appointment of a single arbitrator, each party on the request of the other party shall, by writing under his hand, nominate and appoint an arbitrator to whom such dispute shall be referred; and after any such appointment has been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation; and if for the space of fourteen days after any such dispute has arisen, and after a request in writing has been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute, and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrators to be supplied. 192. If before the matters so referred are determined any arbitrator appointed by either party dies or becomes incapable, or refuses or for seven days neglects to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if for the space of seven days, after notice in writing from the other party for that purpose, he fails to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal, or disability as aforesaid.

Appointment of umpire. 193. Where more than one arbitrator has been appointed such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ; and if such umpire dies, or refuses or for seven days neglects to act, they shall forthwith after such death, refusal, or neglect appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Governor in Council empowered to appoint an umpire on neglect of the arbitrators. 194. If in either of the cases aforesaid the said arbitrators refuse or, for seven days after request of either party to such arbitration, neglect to appoint an umpire, it shall be lawful for the Governor in Council if he thinks fit, on the application of either party to such arbitration, to appoint an umpire, and the decision of such umpire on the matters on which the arbitrators differ shall be final.

Powers of arbitrators to call for books, etc. 195. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Costs to be in the discretion of the arbitrators. 196. Except where it is hereby otherwise provided, the costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpires, as the case may be.

Submission to arbitration may be made rule of court. 197. The submission to any such arbitration may be made a rule of the Supreme Court on the application of either party.

198. = N. S. W. a. (No. 40 of 1899) § 95, except: "subject to" is substituted for "under", and "the company" for "such company".

199. = V. a. (No. 1074) § 151, except: in both instances "this Part of" is omitted before "this Act"; "trader" is substituted for "person" in both instances; "trader" is inserted between "individual" and "and any conveyance".

[§ 200 is repealed.]

201. = N. S. W. a. (No. 40 of 1899) § 163, except: "any company" is substituted for "such company" in both instances; "wound up under this Act" is inserted before "destroys".

202. = V. a. (No. 1074) § 154.

203. = V. a. (No. 1074) § 155, except: "it shall be lawful for the liquidators" is substituted for "the liquidators may", and "to prosecute" for "prosecute".

204. = N. S. W. a. (No. 40 of 1899) § 165 (1), except: "of any company under this Act" is substituted for "under this Part of this Act of any company".

Power of Supreme Court to make rules.

[§ 205 empowers the judges of the Supreme Court to make rules for the winding-up of companies.]

Part V. Registration Office.

[§ 206 relates to the constitution of the Registration Office, and for the inspection of documents there kept.]

Part VI. Application of Act to Companies registered under The Joint Stock Companies Act.

[§§ 207—209 provide that this Act, shall apply to companies formed or registered under *The Joint Stock Companies Act*. Exceptions and qualifications.]

Part VII. Companies authorised to register under this Act.

210. = V. a. (No. 1074) § 159, except: in introductory paragraph "this Division of" is omitted; in (I.), (II.) and (V.) "any Act of the legislature of this Colony, or by any Act of the Imperial Parliament" is substituted for "Act of Parliament"; in (I.) and (II.) "under this Act in pursuance of this Part thereof" is substituted for "under this Part of this Act in pursuance of this Division thereof"; in (III.) "this Division of" is omitted, and "this Part of" is omitted before "Act as a company"; in (IV.) "under this Act in pursuance of this Part thereof" is substituted for "under this Part of this Act in pursuance of this Division thereof"; in (VI.) the beginning word is "where" instead of "when". — See also c. (59 Vic. No. 19) § 7—9, *infra*.

Companies capable of being registered. 211. With the above exceptions, and subject to the foregoing regulations, every company (formed under any Act of the Legislature of this Colony) and consisting of seven or more members, existing at the time of the commencement of this Act, including any company registered under *The Joint Stock Companies Act*, consisting of seven or more members, and any company hereafter formed in pursuance of any Act of the Parliament of Tasmania other than this Act, or any Act of the Imperial Parliament, or of Letters Patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited company, or a company limited by shares, or a company limited by guarantee; and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up. — E. § 249; N. S. W. a. (No. 40 of 1899) 168; V. a. (No. 1074) 160; S. A. a. (No. 557) 81; Q. e. (27 Vic. No. 4) 174; W. A. a. (56 Vic. No. 8) 83; N. Z. 273.

212. = N. S. W. a. (No. 40 of 1899) § 169, except: no division into paragraphs; "this Division" is omitted; "so far as the same relates to the description of companies empowered to register as companies limited by shares" is inserted before "a joint stock company"; "and" is inserted before "such company"; "this Part of" is omitted.

[§ 213 relates to the liability of banking companies for notes issued by them.]

214. = N. S. W. a. (No. 40 of 1899) § 171, except: "of this Division" is omitted; in (b) "the legislature of this Colony or of any Act of the Imperial" is inserted before "Parliament"; "copartnery" is substituted for "copartnership"; "and also" is inserted before "if any such"; "the above list and copy shall be accompanied by" is inserted before "a statement".

215. = N. S. W. a. (No. 40 of 1899) § 172, except: "of this Division" is omitted; "Royal Charter" is omitted; "the legislature of this Colony or of any Act of the Imperial" is inserted before "Parliament"; "copartnery" is substituted for "copartnership".

216. = N. S. W. a. (No. 40 of 1899) § 173, except: "this Part of" is omitted before "this Act".

217. = N. S. W. a. (No. 40 of 1899) § 174, except: "statutory" is inserted before "declaration"; "made in pursuance of the Act of Council of 8th William the 4th, No. 2" is added at the end of the section.

218. = N. S. W. a. (No. 40 of 1899) § 175, except: "is" is omitted after "or".

219. = N. S. W. a. (No. 40 of 1899) § 176, except: no division into paragraphs; "and" is inserted before (2) and (3); "as a prepaid letter" is omitted after "putting the same"; "to or" is inserted after "their address"; "person or" is inserted before "persons"; "notice shall be given" is substituted for "notice is given".

220. = N. S. W. a. (No. 40 of 1899) § 177, except: "of any company" is omitted after "registration" and inserted after "Act"; "of this Division" is omitted; "the Parliament of Tasmania, or by some Act of the Imperial" is inserted before "Parliament"; "by" is inserted before "Letters Patent"; "or by Royal Charter" is omitted.

221. = N. S. W. a. (No. 40 of 1899) § 178, except: "any company" is substituted for "a company"; "this Division of" is omitted before "this Part".

222. = N. S. W. a. (No. 40 of 1899) § 179, except: "this Division of" is omitted; "Tables marked B and C in the first Schedule" is substituted for "Table marked B in the second Schedule"; "this Part of" is omitted after "under"; "and" is inserted before "thereupon"; "and to exercise all the functions of an incorporated company" is omitted.

223. = N. S. W. a. (No. 40 of 1899) § 180, except: no division into paragraphs; "of this Division" is omitted after "pursuance"; "this Part of" is omitted after "under" in all other instances; "and" is inserted before (2).

224. = V. a. (No. 1074) § 173, except: "things in action" is substituted for "choses in action"; "this Part of" is omitted in both instances.

225. = N. S. W. a. (No. 40 of 1899) § 182, except: "of this Division" is omitted.

226. = N. S. W. a. (No. 40 of 1899) § 183, except: no division into paragraphs; "of this Division" is omitted; "nevertheless" is inserted before (2).

227. = N. S. W. a. (No. 40 of 1899) § 184, except: in (1) "this Act in pursuance of this Part thereof" is substituted for "this Division of this Part of this Act"; "of the legislature of this Colony or of any Act of the Imperial" is inserted before "Parliament"; "Royal Charter" is omitted; "copartnery" is substituted for "copartnership", and "regulating the company" for "regulating such company"; "and" is inserted before (2); "this Part of" is omitted before "this Act" in both places; (2) reads: "(a) That Table A in the first Schedule to this Act shall not, unless adopted by special resolution, apply to any company registered under this Act in pursuance of this Part thereof; b) That the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered; c) That no company shall have power to alter any provision contained in any Act of the legislature of this Colony, or in any Act of the Imperial Parliament relating to the company; d) That no company shall have power, without the sanction of the Governor in Council, to alter any provision contained in any Letters Patent relating to the company"; e) = V. a. (No. 1074) § 176 (5), except: "at law or in equity" is inserted after "who is liable"; f) = V. a. (No.

1074) § 176 (6), except: "this Part of" is omitted in both places; at the end is inserted: "But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act in pursuance of this Part thereof by virtue of any Act of the legislature of this Colony, or of any Act of the Imperial Parliament, Deed of Settlement, contract of copartnery, Letters Patent, or other instrument constituting or regulating the company."

Power of Court to restrain further proceedings. 228. The Court may, at any time after the presentation of a petition for winding-up a company registered in pursuance of this Part of this Act, and before making an order for winding-up the company, upon the application by motion of any creditor of the company, restrain further proceedings in any action, suit, or legal proceeding against any contributory of the company as well as against the company as hereinbefore provided, upon such terms as the Court thinks fit. — E. § 265; N. S. W. a. (No. 40 of 1899) 92; V. a. (No. 1074) 177; S. A. a. (No. 557) 110; Q. e. (27 Vic. No. 4) 191; W. A. a. (56 Vic. No. 8) 112; N. Z. 243. — Cp. c. (59 Vic. No. 19) § 22, *infra*.

Order for winding up company. 229. Where an order has been made for winding up a company registered in pursuance of this Part of the Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose. — E. § 266; N. S. W. a. (No. 40 of 1899) 94; V. a. (No. 1074) 178; S. A. a. (No. 557) 112; Q. e. (27 Vic. No. 4) 192; W. A. a. (56 Vic. No. 8) 114; N. Z. 244.

Part VIII. Application of Act to unregistered Companies.

[§§ 230—235 are repealed.]

Part IX. Repeal of Acts, and temporary Provisions.

Repeal of Acts. 236. After the commencement of this Act there shall be repealed the several Acts and parts of Acts specified in the third Schedule hereto.

Saving clause as to repeal. 237. No repeal or partial repeal hereby enacted shall affect: 1. Anything duly done under any Acts hereby partly or wholly repealed; 2. The incorporation of any company registered under any Act hereby partly or wholly repealed; 3. Any right or privilege acquired or liability incurred under any Act hereby partly or wholly repealed; 4. Any penalty, forfeiture, or other punishment incurred in respect of any offence against any Act hereby partly or wholly repealed; 5. Table B in the Schedule annexed to *The Joint Stock Companies Act*, or any part thereof, so far as the same applies to any company existing at the time of the commencement of this Act; 6. The following companies or copartnerships if in existence or subsisting at the commencement of this Act; that is to say: The Bank of Van Diemen's Land, The Cornwall Fire and Marine Insurance Company, The Commercial Bank, The Derwent and Tamar Fire, Life, and Marine Assurance Company, The Hobart Town and Launceston Marine Insurance Company, The High School at Hobart Town, The New Norfolk Bridge Company, The Norfolk Plains Bridge Company, The Tasmanian Life and Fire Insurance Company, The Union Bank of Australia.

[§ 238 provides that existing proceedings for winding-up under the acts hereby repealed shall not be affected.]

[§ 239 provides that no conveyances, mortgages, or deeds made in pursuance of acts hereby repealed shall be affected by this repeal.]

[§§ 240—241 give a temporary power to companies registered under *The Joint Stock Companies Act* to change their registered office.]

Schedules.

First Schedule.

Table A. (This Table, containing the regulations of a company limited by shares, is practically identical with S. A. a. [No. 557] Sched. II. Table A.)

Table B. (Table of fees to be paid to the Registrar by a company having a capital divided into shares.)

Table C. (Table of fees to be paid to the Registrar by a company not having a capital divided into shares.)

Form D. (Form of statement referred to in Part 3 of the Act. Similar to S. A. a. [No. 557] Sched. V.)

Second Schedule.

(This Schedule contains the forms of the memoranda of association and articles of association of companies.)

Third Schedule.

Date and Number of Act.	Title of Act.	Extent of Repeal.
5 Vic. No. 17.	An Act to consolidate and amend the law respecting certain copartnerships.	The whole Act, except Sections 21, 23, 24, 25, 27, & so much of Section 26 as provides for the recovery of any penalty imposed under Section 23.
7 Vic. No. 16.	An Act to amend and restrict the Operation of an Act of this Island, intituled An Act to consolidate and amend the law respecting certain copartnerships.	
23 Vic. No. 12.	An Act for the Incorporation and Regulation of Joint Stock Companies and other Associations, with or without Limited Liability.	

b) 44 Vic. No. 3. An Act to enable Shareholders in Companies to vote by Proxy at Companies' Meetings (20th October, 1880).

Shareholders in and members of companies may vote by proxy. 1. Shareholders in any company, and the members of any company or copartnership mentioned or referred to in the third section of the Act of Council of the 5th Victoria, No. 17, may vote at any meeting of any such company or copartnership either personally or by proxy: Provided that nothing contained in this Act shall empower any such shareholder or member as aforesaid to vote by proxy in any case where any special Act relating to any company, or the deed of association, or deed of copartnership, or the rules of any company or copartnership shall forbid the use of proxies.

Instrument authorising a person to vote as a proxy to be in writing, and attested, etc., but need not be under seal nor subject to 24 Vict. No. 3. 2. Every instrument appointing or authorising any one person to vote as a proxy at any one meeting of any such company or copartnership shall be written or printed, or partly written and partly printed, under the hand of the appointor and attested by one witness, and shall specify the day upon which the meeting at which such instrument is intended to be used is to be held, and shall be available only at the meeting so specified or any adjournment thereof. Such instrument need not be under seal, and shall not, nor shall any instrument appointing a proxy under *The Bankruptcy Act, 1870*, or any general rules made thereunder, or under any Act relating to insolvent debtors, be subject to the provisions of the Act of Parliament of the 24th Victoria, No. 3.

c) 59 Vic. No. 19. An Act to consolidate and amend certain Portions of the Law relating to Companies (7th October, 1895).

1. This Act may be cited as *The Companies Act, 1895*.

Interpretation. 2. In this Act the expression "the principal Act" shall mean *The Companies Act, 1869*; and the expression "deed of settlement" includes any contract or copartnership or other instrument constituting or regulating the company, and not being an Act of Parliament, or Royal Charter, or Letters Patent.

Repeal of existing Acts. Schedule 1. Application of Act to matters and things done. 3. On and after the day on which this Act comes into operation, the Acts or portions of Acts of the Parliament of Tasmania set forth in the Schedule 1. hereto shall be and are hereby repealed: Provided that such repeal shall not affect: I. Anything duly done under any Act hereby repealed before the date on which this Act comes into operation; II. Any liability accruing under any such repealed Act before the date on which this Act comes into operation. And, excepting so far as there is anything in this Act inconsistent therewith, this Act shall apply to all matters and things done under any repealed Act and of any force or effect at the date on which this Act comes into operation by virtue of any Act hereby repealed, as if made or done hereunder. And whenever in any Act the Acts hereby repealed, or any of them, are mentioned such mention shall hereafter be held and construed to mean and refer to this Act.

Articles of association.

Articles of association may be written or printed. 4. The articles of association of a company, mentioned in section sixteen of the principal Act, may be either written or printed, notwithstanding anything to the contrary contained in the said section.

Memorandum of association.

5. 1. = V. f. (No. 1482) § 77, except: "registered under the principal Act" is inserted before "may by special resolution"; "object of the company but" is substituted for "objects of the company but" — probably a typographical error; "which has jurisdiction to make an order for winding-up the company" is inserted after "Court". 2. Before confirming any such alteration the Court must be satisfied: I. That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any person or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and II. That with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged, or has determined, or has been secured to the satisfaction of the Court: Provided that the Court may, in the case of any person or class of persons, for special reasons dispense with the notice required by this section. 3. = V. f. (No. 1482) § 78 (3). 4. = V. f. (No. 1482) § 79, except: "this Division of" is omitted; "provided always that" is inserted before "it shall not be lawful"; "thinks fit" is substituted for "think fit". 5. The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company: (a-e) = V. f. (No. 1482) § 80 (a-e).

6. 1. = V. f. (No. 1482) § 82, except: "for a deed of settlement" is substituted for "for the deed of settlement"; "requisitions" for "requirements"; "and" is inserted before "thenceforth"; "this Division of" is omitted; "*The Companies Act, 1869*", is substituted for "the principal Act", and throughout "Registrar" for "Registrar-General". 2. If a company makes default in delivering to the Registrar any document required by this Act to be delivered to him, the company shall be liable to a penalty not exceeding ten pounds during every day during which it is in default.

Registration of companies.

Companies capable of being registered. 7. With the exceptions and subject to the regulations specified in section two hundred and ten of the principal Act, every company existing at the time of the commencement of the principal Act, including any company registered under *The Joint Stock Companies Act* consisting of seven or more members, and any company hereafter formed in pursuance of any Act of the Parliament of Tasmania, other than the principal Act, or any Act of the Imperial Parliament, or of Letters Patent, or being otherwise duly constituted by law or contract, and consisting of seven or more members, and whether or not formed for the acquisition of gain, may at any time hereafter register itself under the principal Act as an unlimited company, or a company limited by shares, or a company limited by guarantee; and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Registration valid in certain cases. 8. Where any company has been registered under Part VII. of the principal Act before the commencement of this Act, and a

certificate of incorporation has been given to such company so registered as aforesaid, such registration shall be as valid and effectual in all respects as if such company had been registered in pursuance of the principal Act, and the certificate of incorporation before mentioned shall be conclusive evidence that all the requisitions contained in the principal Act in respect of registration under the principal Act have been complied with, and that the company is authorised to be registered thereunder as a limited or unlimited company, as the case may be; and the date of incorporation mentioned in such certificate shall be deemed to be the date of the incorporation of the company under the principal Act.

[§ 9 relates to associations formed for purposes not of gain.]

Transfer of shares.

Transfer may be registered at request of transferor. 10. A company shall, on the production of a duplicate transfer or any other reasonable evidence, on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee. — E. § 28; N. S. W. a. (No. 40 of 1899) 56; V. f. (No. 1482) 169; Q. f. (53 Vic. No. 18) 20.

Winding-up of registered companies.

Statement of company's affairs. 11. 1. Where the Court has made an order for winding up a company, there shall be made out and submitted to the official liquidator a statement as to the affairs of the company in the prescribed form, verified by affidavit, and showing the particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors of the company, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official liquidator may require. 2. The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors, and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company, or having taken part in the formation of the company at any time within one year before the order for winding up the company, as the official liquidator, subject to the direction of the Court, may require to submit, and verify the same. 3. The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the official liquidator or the Court may for special reasons appoint. 4. Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator out of the assets of the company, such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court. 5. If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues. 6. Any person stating himself in writing to be a creditor or contributory shall be entitled by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom; but any person untruthfully stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the liquidator.

Report on winding-up and proceedings thereupon. 12. 1. Where the Court has made an order for winding up a company, the official liquidator shall, as soon as practicable after receipt of the statement of the company's affairs, submit a preliminary report to the Court: I. As to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and II. If the company has failed, as to the causes of failure; and III. Whether in his opinion further enquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof. 2. The official liquidator may also, if he thinks fit, make a further report or further reports stating the manner in which the company was formed, and whether in his opinion any fraud is being committed by any person in the promotion or formation of the company,

or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which, in his opinion, it is desirable to bring to the notice of the Court. 3. The Court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company. 4. The official liquidator shall take part in the examination, and for that purpose may employ a solicitor with or without counsel. 5. The Court may put such questions to the person examined as to the Court may seem expedient. 6. The person examined shall be examined on oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. The person examined shall at his own cost prior to such examination be furnished with a copy of the official liquidator's report, and shall also at his own cost be entitled to employ at such an examination a solicitor with or without counsel, who shall be at liberty to put such questions to the person examined as the Court may deem just for the purpose of enabling that person to explain or qualify any answer given by him. Provided also, that if such person is in the opinion of the Court exculpated from any charges made or suggested against him the Court may allow him such costs as the Court in its discretion may think fit. Notes of the examination shall be taken down in writing and shall be read over to, or by, and signed by the person examined, and may thereafter be used as evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times. 7. The Court may if it thinks fit adjourn the examination from time to time.

Power of Court to assess damages against delinquent directors, officers, and promoters. 13. 1. Where in the course of the winding-up of a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained, or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may on the application of any liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the Court thinks just. 2. The provisions of this section shall apply in the winding-up of any company where the same is being wound up by or subject to the supervision of the Court, or is being wound up voluntarily, and whether the winding-up commenced before or after the passing of this Act and notwithstanding that the offence is one for which the offender may be criminally responsible. — E. § 215; N. S. W. a. (No. 40 of 1899) 162; V. f. (No. 1482) 135; S. A. a. (No. 557) 179; Q. e. (27 Vic. No. 4) 166; W. A. a. (56 Vic. No. 8) 181; N. Z. 254.

Attorney-General may apply to Court to wind up company. 14. Where a company is being wound up voluntarily or subject to the supervision of the Court, the Attorney-General may present a petition that the company be wound up by the Court, and thereupon if the Court is satisfied that the voluntary winding-up or winding-up subject to supervision cannot be continued with due regard to the interest of the creditors or contributories, it may make an order that the company be wound up by the Court.

Information as to pending liquidations. 15. 1. If the winding-up of a company is not concluded within one year after its commencement, the liquidator of the company shall, at such intervals as may be prescribed until the winding-up is concluded, send to the Registrar a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation. Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruth-

fully stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the liquidator. 2. If a liquidator makes default in complying with the requirements of this section he shall be liable to a fine not exceeding fifty pounds for each day during which the default continues. 3. If it appears from any such statement or otherwise that any liquidator of the company has in his hands or under his control any money representing unclaimed or undistributed assets of the company, which have remained unclaimed or undistributed for six months after the date of their receipt, the liquidator shall forthwith pay the same into a bank to be approved by the Court to the company's liquidation account. Every such liquidator shall be entitled to the prescribed certificate of receipt for the money so paid, and that certificate shall be an effectual discharge to him in respect thereof. 4. Any person claiming to be entitled to any money paid into any bank in pursuance of this section may apply to the Court for the payment of the same, and the Court may, on a certificate by the liquidator that the same person claiming is entitled, make an order for the payment to that person of the sum due. 5. This section shall apply whether the winding-up of the company has commenced before or after the commencement of this Act.

Discretionary powers of liquidator and control thereof. 16. 1. Subject to the provisions of the principal Act, the liquidator of a company which is being wound up by order of the Court shall, in the administration of the property of the company, and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution at any general meeting of the creditors or contributories summoned as hereinafter provided. 2. The liquidator may from time to time summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be. 3. The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding-up. 4. Subject to the provisions of the principal Act, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to Court against liquidator. 17. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up by order of the Court, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks fit. — E. § 158 (5); V. f. (No. 1482) 145; S. A. a. (No. 557) 182; W. A. a. (56 Vic. No. 8) 186.

Liquidators may summon meetings of creditors of any company being voluntarily wound up. 18. Whenever a company is being wound up voluntarily under the provisions of the principal Act, the liquidators may from time to time during the continuance of such winding up summon meetings of the creditors of the company for the purposes of this Act in the same manner as general meetings of the shareholders of the same company may be summoned under the provisions of the principal Act. — E. § 158 (2); N. S. W. a. (No. 40 of 1899) 160; V. b. (No. 1269) 3—7; S. A. a. (No. 557) 172; Q. f. (53 Vic. No. 18) 35; W. A. a. (56 Vic. No. 8) 174; N. Z. 258—260.

Authority of creditors may be obtained to compromises. 19. Whenever a company is being wound up voluntarily under the provisions of the principal Act, the liquidators may obtain the authority of a majority in number and two-thirds in value of the creditors of the company present at any meeting of such creditors duly summoned in accordance with the provisions of this Act to make any compromise or arrangement with any contributory or contributories or other debtor or debtors of the company, or with any creditor or creditors of the company; and every such compromise or arrangement made in pursuance of such authority as aforesaid shall be binding on all the creditors of the company. Provided always, that any creditor or contributory of a company affected by any such resolution may, within twenty-one days from the date of the passing of the resolution granting such authority as aforesaid, appeal to the Court against any such resolution, and the Court may thereupon, if it thinks fit, declare such resolution null and void, or may amend or vary the same. [The remainder of the section has special reference to the winding-

up of "The Bank of Van Diemen's Land".] — See notes to § 18, *supra*, and to S. A. a. (No. 557) § 139, 140, 179 *infra*. — Cp. d. (60 Vic. No. 3) § 17, *infra*.

Winding-up of unregistered companies.

Winding-up of unregistered companies. 20. Subject as hereinafter mentioned, any partnership, association, or company consisting of seven or more members, and not registered under the principal Act or under any other Act, and whether or not formed for the acquisition of gain, shall be included under the term "unregistered company" hereinafter used, and may be wound up under the provisions of the principal Act, with the following exceptions and additions: I. Where proceedings for winding up an unregistered company are instituted, the principal place of business of such company shall, for all purposes of this Act, be deemed to be the registered office of the company; II. No unregistered company shall be wound up under this Act otherwise than by order of the Court; III. The circumstances under which an unregistered company may be wound up by order of the Court are as follows: a) When the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs; b) When the company is unable to pay its debts; c) When the company, by reason of being unable to enforce contribution of capital from its members, or by reason of insufficient capital, or for any other reason is unable satisfactorily to continue its business; d) When the Court is of opinion that it is just and equitable that the company should be wound up; IV. An unregistered company shall, for the purposes of this Act, be deemed unable to pay its debts: a) When a creditor to whom the company is indebted at law or in equity, by assignment or otherwise, in a sum not less than fifty pounds then due, has served on the company, by leaving the same at the principal place of business of the company, or by delivering to the secretary, or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand, or, if such creditor be a corporation then under its common seal, requiring the company to pay the sum so due, and the company has, for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor; b) When any action or other legal proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company, and notice in writing of the institution of such action or other legal proceeding having been served upon the company, by leaving the same at the principal place of business of the company, or by delivering it to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not, within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action or other legal proceedings to be stayed, or indemnified the defendant to his reasonable satisfaction against all costs, damages, and expenses to be incurred by him by reason of the same; c) When execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the company, or against any member thereof as such, or against any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied; d) When it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts. — E. §§ 267, 268; N. S. W. a. (No. 40 of 1899) 84, 86, 94; V. a. (No. 1074) 183; S. A. a. (No. 557) 189; Q. e. (27 Vic. No. 4) 193, 196; W. A. a. (56 Vic. No. 8) 191; N. Z. 244.

Who to be deemed a contributory in the event of the company being wound up. 21. 1. In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or to contribute to the payment of the costs, charges, and expenses of winding up the company; and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid. 2. In the event of the death or the insolvency of any contributory, or the marriage of any female contributory, the provisions of the principal Act with respect to the repre-

representatives of a deceased contributory, and to the trustees of an insolvent contributory, and to the consequences of the marriage of a female contributory, shall apply. — E. § 269; N. S. W. a. (No. 40 of 1899) 80—82; V. a. (No. 1074) 176 (5), 184; S. A. a. (No. 557) 190; Q. e. (27 Vic. No. 4) 190 (5), 194; W. A. a. (56 Vic. No. 8) 192; N. Z. 174—176.

Power of Court to restrain further proceedings. 22. The Court may, at any time after the presentation of a petition for winding up an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action or legal proceeding against any contributory of the company, as well as against the company, upon such terms as the Court thinks fit. — E. § 270; N. S. W. a. (No. 40 of 1899) 80; V. a. (No. 1074) 177, 185; S. A. a. (No. 557) 191; Q. e. (27 Vic. No. 4) 191, 195; N. Z. 243.

Effect of order for winding-up company. 23. When an order has been made for winding up an unregistered company no action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose. — E. § 271; N. S. W. a. (No. 40 of 1899) 94; V. a. (No. 1074) 186; S. A. a. (No. 557) 192; Q. e. (27 Vic. No. 4) 196; W. A. a. (56 Vic. No. 8) 194; N. Z. 244, 290.

Provision in case of unregistered company. 24. 1. If any unregistered company has no power to sue and be sued in a common name, or if for any other reason it appears expedient, the Court may, by the order made for winding up such company or by any subsequent order, direct that all such property, real and personal, including all interest, claims, and rights into and out of the property, real and personal, including choses in action, as may belong to or be vested in the company, or to or in any person or persons in trust for or on behalf of the company, or any part of such property, is to vest in the official liquidator by his official name, and thereupon the same, or such part thereof as may be specified in the order, shall vest accordingly. 2. The official liquidator may, in his official name, and after giving such indemnity, if any, as the Court directs, bring or defend any actions or other legal proceeding¹) relating to any property vested in him, or any actions or other legal proceedings necessary to be brought or defended for the purposes of effectually winding up the company and recovering the property thereof. — E. § 272; N. S. W. a. (No. 40 of 1899) 185; V. a. (No. 1074) 187; S. A. a. (No. 557) 193; Q. e. (27 Vic. No. 4) 197; W. A. a. (56 Vic. No. 8) 195.

Provisions cumulative. 25. The provisions made by this Act with respect to unregistered companies are in addition to, and not in restriction of, any provisions contained in the principal Act with respect to winding up companies by order of the Court; and the Court or official liquidator may, in addition to the powers conferred by this Act, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in relation to the winding up of companies formed under the principal Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under the principal Act, and then only to the extent provided by this Act. — E. § 273; N. S. W. a. (No. 40 of 1899) 98; V. a. (No. 1074) 188; S. A. a. (No. 557) 194; Q. e. (27 Vic. No. 4) 198; W. A. a. (56 Vic. No. 8) 196.

Company formed solely by contract may be wound up. 26. Every partnership, association, or company consisting of seven or more members, and existing at the time of the commencement of this Act, or which may hereafter be formed, and whether or not for the acquisition of gain, may be wound up as an unregistered company under this Act, notwithstanding the same is constituted solely by contract between the members.

Evidence.

Reception of certified copies of documents as legal evidence. 27. Any certificate of the incorporation of any company given by the Registrar or by any Assistant Registrar for the time being shall be received in evidence as if it were the original certificate; and any copy of or extract from any of the documents or part of the documents kept and registered at the office for the Registration of Joint Stock Companies, if duly certified to be a true copy under the hand of the Registrar or one of the Assistant Registrars for the time being, and whom it shall not be necessary

¹) *Sic.*

to prove to be the Registrar or Assistant Registrar, shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document. — See notes to S. A. a. (No. 557) § 19, 20.

Bills of Sale Act not to apply to debentures issued by company. 28. Nothing in *The Bills of Sale Act, 1892*, shall apply to any debentures issued by any company registered under the principal Act and secured upon the capital, stock, goods, chattels, effects, rights, claims, and property of such company, or upon any part of such capital, stock, goods, chattels, effects, rights, claims, and property, or to any trust deed or other deed or instrument for securing any such debentures issued by any such company. — Cp. e. (No. 25 of 1906) § 5, *infra*.

Distribution of assets.

29. = V. f. (No. 1482) § 148 (1), except: “being wound up under the principal Act or this Act” is substituted for “which is being wound up”; in (b) “two” is substituted for “four”; and “proportions” for “proportion”.

Liability of directors and others.

Liability for statements in prospectus. 30. 1. Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director of the Company at the time of the issue of the prospectus or notice, and every person who having authorised such naming of himself is named in the prospectus or notice as a director of the company either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice or in any report or memorandum appearing on the face thereof, or by reference incorporated therein, or issued therewith, unless it is proved: I. With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe that the statement was true; and II. With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation. Provided always, that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, or accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation, such director, person named, promoter, or other person who authorised the issue of the prospectus or notice as aforesaid shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and III. With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document; or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his knowledge or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor to be given. 2. A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company. 3. Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or

debentures, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein unless he shall have authorised the issue of such prospectus or notice, or have adopted or ratified the same. 4. In this section the word "expert" includes any person whose profession gives authority to a statement made by him. — E. § 84; N. S. W. a. (No. 40 of 1899) 66; V. f. (No. 1482) 104—110, 118; S. A. a. (No. 557) 221; Q. g. (55 Vic. No. 10) 6; W. A. a. (56 Vic. No. 8) 222; N. Z. 75, 76.

Indemnity where name of person has been improperly inserted as a director.

31. Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice, shall be liable to indemnify the person named as a director of the company, or as having agreed to become a director thereof, as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof. — E. § 84 (3); V. f. (No. 1482) 111; S. A. a. (No. 557) 222; Q. g. (55 Vic. No. 10) 7; W. A. a. (56 Vic. No. 8) 223; N. Z. 77.

Contribution from co-director, etc. 32. Every person who, by reason of his being a director, or named as a director, or as having agreed to become a director, or of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution as in cases of contract from any other person who if sued separately would have been liable to make the same payment. — E. § 84 (4); V. f. (No. 1482) 120; S. A. a. (No. 557) 223; Q. g. (55 Vic. No. 10) 8; W. A. a. (56 Vic. No. 8) 224; N. Z. 78.

Provision relating to newspapers.

Affidavit or declaration not required. 33. None of the provisions of any Act of Council or Act of Parliament relating to any affidavit, affirmation, or declaration to be made and delivered by the printers or printer, and publishers or publisher, and proprietors or proprietor of any newspaper in Tasmania shall apply to the case of any newspaper which belongs to a company duly incorporated under and subject to the provisions of the principal Act.

Recognizance may be entered into by manager or secretary. 34. The recognizance required by the Act of Council 8 William 4, No. 11, may in the case of any incorporated company carrying on the business of a newspaper proprietor, printer, or publisher be entered into by the manager or secretary of such company for and on behalf of such company together with the sureties required by the said Act, and such company together with such sureties shall be liable in respect of any such recognizance; but such manager or secretary shall not by reason of entering into any such recognizance incur any personal liability whatsoever.

Acts to be read together. 35. This Act and *The Companies Act, 1869*, shall be read and construed together as one Act.

Schedule.

Repeal.

Date and Number of Act.	Title of Act.	Extent of Repeal.
33 Vic. No. 22.	The Companies Act, 1869.	Part VIII. and sections 187 and 200.
47 Vic. No. 8.	The Companies Act, 1883.	The whole Act.
55 Vic. No. 6.	The Directors' Liability Act, 1891.	The whole Act.
55 Vic. No. 8.	The Companies (Memorandum of Association) Act, 1891.	The whole Act.
56 Vic. No. 23.	The Companies Act, 1892.	The whole Act.
57 Vic. No. 19.	An Act to further amend The Companies Act, 1869.	The whole Act.

**d) 60 Vic. No. 3. An Act to further amend the Companies Act, 1869
(2d October, 1896).**

Preliminary.

Short title. 1. This Act may be cited for all purposes as *The Companies Act, 1896*.

Interpretation. 2. In this Act the expression "the principal Act" shall mean *The Companies Act, 1869*.

Power to Company to reduce capital. 3. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the Registrar as is hereinafter mentioned. — E. §§ 46, 51; N. S. W. a. (No. 40 of 1899) 39 (1,2); V. f. (No. 1482) 88 (1); S. A. a. (No. 557) 68; Q. f. (53 Vic. No. 18) 4; W. A. a. (56 Vic. No. 8) 70.

Company to add "and reduced" to its name for a limited period. 4. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall until such date be deemed to be part of the name of the company within the meaning of the principal Act. — E. § 48; N. S. W. a. (No. 40 of 1899) 41; V. f. (No. 1482) 88 (2); S. A. a. (No. 557) 69; Q. f. (53 Vic. No. 18) 5; W. A. a. (56 Vic. No. 8) 71; N. Z. 44.

Company to apply to the Court for an order confirming reduction. 5. A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction; and on the hearing of the petition the Court, if satisfied that, with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit. — E. §§ 47, 50; N. S. W. a. (No. 40 of 1899) 42; V. f. (No. 1482) 89; S. A. a. (No. 557) 70 (1); Q. f. (53 Vic. No. 18) 6; W. A. a. (56 Vic. No. 8) 72 (1); N. Z. 44.

Definition of "the Court". 6. The expression "the Court" as used in this Act shall mean the Supreme Court in its equity jurisdiction, and the one hundred and sixteenth section of the principal Act shall be construed as if the term "winding up" in that section included proceedings under this Act; and the Court may in any proceedings under this Act make such order as to costs as it deems fit.

Creditors may object to reduction; and list of objecting creditors to be settled by the Court. 7. 1. Except as hereinafter provided, where a company proposes to reduce its capital every creditor of the company who at the date fixed by the court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction and to be entered in the list of creditors who are so entitled to object. 2. The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims; and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction. — E. § 49; N. S. W. a. (No. 40 of 1899) 43; V. f. (No. 1482) 90; S. A. a. (No. 557) 70 (3); Q. f. (53 Vic. No. 18) 9; W. A. a. (56 Vic. No. 8) 72 (3); N. Z. 45. — For interpretation of the term "capital", and for the extent of the power to reduce capital, see e. (6 Edw. 7, No. 25) § 2, *infra*. Cp. also *ibid.* § 4.

Court may dispense with consent of creditor on security being given for his debt. 8. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the court may (if it think fit) dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned; that is to say: I. If the full amount of the debt or claim of the creditor is admitted by the company, or though not admitted is such as

the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated; II. If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it think fit, enquire into and adjudicate upon the validity of such debt or claim and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court; and the amount fixed by the Court on such enquiry and adjudication shall be set apart and appropriated. — E. § 49; N. S. W. a. (No. 40 of 1899) 44; V. f. (No. 1482) 91; S. A. a. (No. 557) 70 (6); Q. f. (53 Vic. No. 18) 10; W. A. (56 Vic. No. 8) 72 (6); N. Z. 46.

Consent of creditors not required in certain cases, and words and “reduced” may be dispensed with. 9. Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any shareholder of any paid-up capital: I. The creditors of the company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction; and II. It shall not be necessary before the presentation of the petition for confirming the reduction, to add, and the Court may, if it think it expedient so to do, dispense altogether with the addition of the words “and reduced”, as mentioned in this Act. — E. §§ 48, 49; N. S. W. a. (No. 40 of 1899) 41; V. f. (No. 1482) 99; S. A. a. (No. 557) 70 (4); Q. f. (53 Vic. No. 18) 7; W. A. a. (56 Vic. No. 8) 72 (4); N. Z. 44.

Court may require company to publish reasons for reduction of capital. 10. In any case that the Court think fit so to do, it may require the company to publish, in such manner as it thinks fit, the reasons for the reduction of its capital or such other information in regard to the reduction of its capital as the Court may think expedient, with a view to give proper information to the public in relation to the reduction of its capital by the company, and, if the Court think fit, the causes which led to such reduction. — E. § 55; N. S. W. a. (No. 40 of 1899) 45; V. f. (No. 1482) 100; S. A. a. (No. 557) 70 (2); Q. f. (53 Vic. No. 18) 7; W. A. a. (56 Vic. No. 8) 72 (2); N. Z. 54.

Order and minute to be registered. 11. 1. The Registrar, upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court) showing, with respect to the capital of the company as altered by the order, the amount of such capital, the number of shares in which it is to be divided, the amount of each share, and the amount (if any) proposed to be deemed to have been paid up on each share, shall register the order and minute; and on the registration the special resolution confirmed by the order so registered shall take effect. 2. Notice of such registration shall be published in such manner as the Court may direct. 3. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute. — E. § 51; N. S. W. a. (No. 40 of 1899) 46; V. f. (No. 1482) 92, 100; S. A. a. (No. 557) 71; Q. f. (53 Vic. No. 18) 11; W. A. a. (56 Vic. No. 8) 73; N. Z. 47.

Minute to form part of memorandum of association. 12. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute. — E. § 52; N. S. W. a. (No. 40 of 1899) 47; V. f. (No. 1482) 93; S. A. a. (No. 557) 72 (1); Q. f. (53 Vic. No. 18) 12; W. A. a. (56 Vic. No. 8) 74 (1); N. Z. 47.

Saving of rights of creditors who are ignorant of proceedings. 13. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the one hundred and twelfth section

of the principal Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and on the company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves. — E. § 53; N. S. W. a. (No. 40 of 1899) 48; V. f. (No. 1482) 94; S. A. a. (No. 557) 73; Q. f. (53 Vic. No. 18) 13; W. A. a. (56 Vic. No. 8) 75; N. Z. 48.

Copy of registered minute. 14. A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty. — E. § 52; N. S. W. a. (No. 40 of 1899) 49; V. f. (No. 1482) 95; S. A. a. (No. 557) 72 (2); Q. f. (53 Vic. No. 18) 14; W. A. a. (56 Vic. No. 8) 74 (2); N. Z. 47.

Penalty on concealment of name of creditor. 15. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanour. — E. § 54; N. S. W. a. (No. 40 of 1899) 50; V. f. (No. 1482) 96; S. A. a. (No. 557) 74; Q. f. (53 Vic. No. 18) 15; W. A. a. (56 Vic. No. 8) 76; N. Z. 50.

Power to make rules extended to making rules concerning matters in this Act. 16. The power of making rules concerning the winding up conferred by the two hundred and fifth section of the principal Act shall extend to making rules concerning matters in which jurisdiction is by this Act given to the Court; and until such rules are made the practice of the Court in matters of the same nature shall, so far as the same is applicable, be followed. — E. §§ 238, 290; V. f. (No. 1482) 97; Q. f. (53 Vic. No. 18) 47.

Compromises with debtors, etc. 17. The provisions of section nineteen of *The Companies Act, 1895*, are hereby declared to empower the creditors of a company which is being wound up voluntarily under the provisions of the principal Act to authorise the liquidators to make from time to time every such compromise as is mentioned in section one hundred and eighty-eight of the principal Act with any debtor or contributory or creditor of the company.

Acts to be read together. 18. This Act and the principal Act and every Act amending the same shall be read and construed together as one and the same Act.

e) 6 Edw. 7, No. 25. An Act to further amend *The Companies Act, 1869*, and its Amendments (22d November, 1906).

Short title and incorporation with 33 Vic. No. 22. 1. This Act may be cited for all purposes as *The Companies Act, 1906*, and shall be read and incorporated with *The Companies Act, 1869*, and every amendment thereof.

Construction of capital and powers to reduce capital contained in 60 Vic. No. 3. 2. The word "capital", as used in *The Companies Act, 1896*, shall include paid-up capital; and the power to reduce capital conferred by that Act shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability

(if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved, notwithstanding anything contained in *The Companies Act, 1896*.

Application of provisions of 60 Vic. No. 3. 3. The provisions of *The Companies Act, 1896*, as amended by this Act, shall apply to any company reducing its capital in pursuance of this Act and of *The Companies Act, 1896*, as amended by this Act.

Power to reduce capital by the cancellation of unissued shares. 4. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution, have not been taken or agreed to be taken by any person; and the provisions of *The Companies Act, 1896*, shall not apply to any reduction of capital made in pursuance of this section. — E. § 41; N. S. W. a. (No. 40 of 1899) 39; V. f. (No. 1482) 88 (1); S. A. a. (No. 557) 68 (6), 70; Q. f. (53 Vic. No. 18) 8; W. A. a. (56 Vic. No. 8) 70 (5), 72; N. Z. 44, 56.

Bills of Sale Act not to apply to debentures issued by a company. 5. Nothing in *The Bills of Sale Act, 1896*, or in *The Bills of Sale Act, 1900*, shall be deemed to have applied, and nothing in *The Bills of Sale Act, 1900*, shall hereafter apply, to any debentures issued by any company registered under *The Companies Act, 1869*, or under *The Foreign Companies Act, No. 2*, and secured upon the capital, stock, goods, chattels, effects, rights, claims, and property of such company or any of them, or upon any part or parts thereof respectively, nor to any trust deed, mortgage deed, or other deed or instrument for securing any such debentures issued by any such company.

f) 59 Vic. No. 17. An Act to enable certain Foreign Companies to carry on Business, and to sue and be sued, in Tasmania (24th December, 1896).

Short title. 1. This Act may be cited as *The Foreign Companies Act*.

Commencement. 2. This Act shall commence and take effect from and immediately after the thirty-first day of December, One thousand eight hundred and ninety-five.

Interpretation. 3. In this Act, unless the context otherwise determines: "Foreign company" shall mean any joint stock company or corporation duly incorporated for trade, manufacture, or other commercial or business purposes, according to the laws in force in the country in which it is incorporated, other than a company incorporated in Tasmania, and shall extend to and include any unincorporated joint stock company which may sue or be sued or hold property in a common name and which shall not have its head office or principal place of business in Tasmania, but shall not extend to or include any mining company: "*Gazette*" means the *Hobart Gazette*: "The Registrar" means the Registrar of the Supreme Court. — N. S. W. c. (No. 22 of 1906) 2; V. f. (No. 1482) 70 (1); S. A. a. (No. 557) 3; Q. l. (59 Vic. No. 2) 2; W. A. a. (56 Vic. No. 8) 3; N. Z. 297.

Company formed out of this Colony and carrying on business in this Colony may sue and be sued in Tasmania. 4. Every foreign company carrying on business in this Colony may, subject to the provisions of this Act, sue and be sued in Tasmania in its corporate name, or in the name under which it carries on business in the country where its head office or principal place of business is situated. — E. § 274; N. S. W. c. (No. 22 of 1906) 7 (1, 2); V. f. (No. 1482) 70 (1, 2); S. A. a. (No. 557) 196; Q. l. (59 Vic. No. 2) 7; W. A. a. (56 Vic. No. 8) 198; N. Z. 298.

Company not to commence or carry on business until provisions of this section complied with. Attorney may delegate powers. 5. A foreign company shall not commence or carry on business in Tasmania until the following provisions in this section contained shall have been complied with: I. The company shall, by power of attorney under its common seal, or executed in such manner as to be binding on the company, empower some person in Tasmania, either generally or in respect of specified matters, to act as its attorney, and shall by such power of attorney empower the same person to sue and be sued or otherwise appear or be impleaded in any Court in any civil or criminal proceedings whatsoever, or before any arbitrator or person having by law or consent of parties authority to hear evidence, and generally on behalf of such

company and within Tasmania and its dependencies to do all acts and execute all deeds and other instruments, whether of the nature of deeds or not, relating to matters within the scope of the power of attorney; II. A declaration shall be made by one of the directors or the general manager, superintendent, or secretary of the company, or any other person acting in a similar capacity, which declaration shall be framed to refer specifically to the power of attorney mentioned in the above sub-section I. of this section (and which said declaration may be indorsed on the said power of attorney or annexed thereto, or may be a separate document), and shall be to the following effect; that is to say: a) That the company is incorporated in [*naming the country in which it has been incorporated*] under the style mentioned in the power of attorney in accordance with the law of the country where it is so incorporated, or, if the company is not incorporated, then that the company is privileged to sue or be sued or hold property in the common name mentioned in the power of attorney in accordance with the law of the country where the privileges are conferred; b) That the seal (if any) affixed to the power of attorney is the common seal of the company; and c) That the seal (if any) has been affixed, and the power of attorney executed, and the powers and authorities purporting to be conferred thereby are authorised to be conferred under the constitution or act of incorporation of the company and its regulations for the time being, and that the person making such declaration is a director, or general manager, superintendent, or secretary thereof; d) In the event of there being no seal to the power of attorney, that by the law of the country in which the company is incorporated a seal is not necessary to the validity of such power; III. The said declaration shall be made before a notary public, British consul, vice-consul or consular agent, or before some person authorised by the law of the country, where the declaration is made to take affidavits or declarations in the nature of statutory declarations; IV. The attorney so appointed shall deposit in the office of the Registrar the power of attorney (or a notarial copy thereof) together with the said declaration, and also, if the company be incorporated, evidence of its incorporation pursuant to section eighteen of this Act; V. The company shall have an office or place of business in Tasmania, where all legal proceedings may be served upon and all notices addressed or given to the company; VI. Where any foreign company shall by power of attorney (hereinafter referred to as "the original power of attorney") under its common seal, or executed in such manner as to be binding on the company, empower some person whether in Tasmania or elsewhere in the Australasian Colonies to act as its attorney with the powers referred to in sub-section I. of this section, and such attorney shall, in exercise of a power thereby conferred, delegate such powers to any other person, or appoint a substitute in Tasmania to exercise such powers, such company shall be deemed to have complied with sub-sections I., II., III., and IV., upon the following provisions in this sub-section contained being complied with: a) A declaration with respect to such original power of attorney shall be made by one of the directors, or general manager, superintendent, or Secretary of the company, or any other person acting in a similar capacity, in accordance with the provisions of sub-sections II. and III.; b) The deed under which such powers as aforesaid are delegated or substitutionary power of attorney, as the case may be, (which deed and substitutionary power of attorney, as the case may be, are hereinafter included in the designation "the sub-power of attorney") shall be executed in the presence of two witnesses, and a declaration in statutory form so framed as to refer specifically to such sub-power of attorney shall be made before a notary public, or some person authorised by the law of the Australasian Colony where the declaration is made to take affidavits or declarations in the nature of statutory declarations, by one of such attesting witnesses to the effect that such sub-power of attorney has been duly executed; such declaration may be in the form of a separate document, or may be indorsed upon the said sub-power of attorney or annexed thereto; c) The company shall deposit in the office of the Registrar the original power of attorney (or a notarial copy thereof) and the declaration relating thereto, and also the sub-power of attorney (or a notarial copy thereof) and the declaration relating thereto, and, if the company shall be incorporated, evidence of its incorporation pursuant to section eighteen of this Act; d) In the case of a sub-agent appointed under the powers contained in an original power of attorney which (or a notarial copy of which) with the declaration referring thereto has already been deposited in the office of the Registrar, together with evidence of incorporation of the com-

pany pursuant to sub-section IV. of this section, it shall not be necessary to comply with sub-section c. of this sub-section, except so far as the same relates to depositing in the Registrar's office the sub-power of attorney and the declaration relating thereto; e) The attorney acting under the sub-power of attorney shall comply with section twelve, sub-section 2. of this Act; VII. Upon the deposit at the Registrar's office of all or any of the documents required by this section to be so deposited, the Registrar shall give a receipt for the same to the person depositing the same, and shall specify therein the certain day when the documents shall have been so deposited in his office; and such receipt shall be taken and allowed as evidence in all Courts that the provisions of this section have been complied with, without proof of appointment of the Registrar or of his signature. — E. § 274; N. S. W. c. (No. 22 of 1906) 7; V. f. (No. 1482) 70; S. A. a. (No. 557) 196, b. (No. 576) 9; Q. l. (59 Vic. No. 2) 3—7; W. A. a. (56 Vic. No. 8) 198, f. (2 Edw. 7, No. 19) 2; N. Z. 298, 300. — In lieu of complying with this section foreign companies may be registered upon complying with g. (62 Vic. No. 26) §§ 6 *et seq.*, *infra*.

Acts of attorney to be binding on company. 6. Every act or thing done or purporting to be done, and every instrument executed or signed, by an attorney (or sub-attorney as the case may be) appointed in pursuance of section five of this Act on behalf of the company by whom he is appointed, shall, if authorised by the power of attorney or sub-power of attorney, bind the company in the same way and to the same extent, and have the same force and effect in every respect as if the same had been done by the company, and as if such instrument had been duly sealed with the common seal of the company or otherwise executed or signed so as to bind the company. — N. S. W. c. (No. 22 of 1906) 7; V. f. (No. 1482) 70 (1); S. A. (No. 557) 197; Q. l. (59 Vic. No. 2) 3—7; W. A. a. (56 Vic. No. 8) 199; N. Z. 299.

Acts under power of attorney good till notice of revocation or of winding-up or dissolution of company filed with Registrar. 7. Every power of attorney (or sub-power of attorney, as the case may be), granted by a foreign company which, or a notarial copy of which, shall have been deposited with the Registrar under section five of this Act, shall, so far as is practicable as between the company, its successors and assigns, on the one hand, and any person dealing with the attorney thereby appointed on the other hand, continue in force notwithstanding the revocation of such power, or the winding-up or dissolution of such company, until written notice of such revocation, winding-up, or dissolution, signed by the said attorney (or sub-attorney, as the case may be), or by an attorney duly appointed in his place, shall have been filed at the office of the Registrar. — E. § 274; N. S. W. c. (No. 22 of 1906) 11, 13; V. f. (No. 1482) 72, 73; S. A. a. (No. 557) 198; W. A. a. (56 Vic. No. 8) 200; N. Z. 305, 306.

Proceedings on death of attorney or on revocation of power of attorney. 8. In the event of the death of any sole or sole surviving attorney whose power of attorney (or a notarial copy thereof) shall have been deposited in the office of the Registrar under section five, or in the event of the filing under the last preceding section of a notice of revocation of the power of any such attorney, the company shall not from the expiration of six months after such death or after the filing of such notice carry on business in Tasmania until the provisions of subsections I., II., III., and IV., down to and inclusive of the word "declaration" of section five shall have been complied with or again complied with, as the case may be: or, in the case of a sole or sole surviving sub-attorney, until the provisions of sub-section VI. of section five shall have been complied with. — S. A. a. (No. 557) 199; W. A. a. (56 Vic. No. 8) 201.

Company to register name of agent and situation of office. 9. Every foreign company shall, after compliance with section five of this Act, and before commencing business in Tasmania, register the names and place of abode or business of the person appointed by such company to carry on the business of such company in Tasmania, and also the situation of the office of such company in this Colony; and the person so registered shall be deemed to be the agent of such company, and such office shall be the registered office of such company for the purposes of this Act. Every foreign company which fails to comply with this provision shall be liable to a penalty not exceeding five pounds for every day during which such company shall carry on business in Tasmania. — E. § 274; N. S. W. c. (No. 22 of 1906) 7 (1); V. f. (No. 1482) 70 (1); S. A. a. (No. 557) 196 (5); Q. l. (59 Vic. No. 2) 8; W. A. a. (56 Vic. No. 8) 198 (5); N. Z. 302.

Mode of registration. Schedule 1. 10. The registration of such agent and office shall be effected in the following manner: The duly appointed attorney (or sub-attorney, as the case may be), of such company shall make and sign a declaration in the form in the Schedule 1, or to the like effect, before a justice of the peace, and such declaration when so made and signed shall be published in two consecutive numbers of the *Gazette* and of some newspaper published in Hobart and some newspaper published in Launceston, and copies of such *Gazette* and newspapers shall be forwarded to and be retained by the Registrar. Every person who wilfully makes any such declaration falsely in any particular shall be guilty of a misdemeanour, and on conviction thereof be liable to be imprisoned for any term not exceeding two years. — N. S. W. c. (No. 22 of 1906) 7 (3, 4); V. f. (No. 1482) 71; S. A. a. (No. 557) 196 (4); Q. l. (59 Vic. No. 2) 3, 4; W. A. a. (56 Vic. No. 8) 198; N. Z. 300.

Proof of registration. Schedule 2. 11. A certificate in the form or to the effect in the Schedule 2, purporting to be under the hand of the Registrar (who is hereby required to give such certificate to any person applying for the same on payment of one shilling), and which certificate shall set forth the name of the agent of, and the situation of the office of the company in Tasmania, shall as against the company be conclusive evidence, and as against all other parties shall be *prima facie* evidence, in all courts that the foreign company therein referred to has been duly incorporated, or not, as the case may be, that the person named therein as agent is the agent of such company in Tasmania, and that the office of such company in Tasmania is situate as therein stated, and that such agent and office have been duly registered under the provisions of this Act, and of the time of registration, and of all other particulars mentioned in such certificate; and evidence of the appointment of the Registrar or of his signature shall not be required. — N. S. W. c. (No. 22 of 1906) 11; V. f. (No. 1482) 72; S. A. a. (No. 557) 204; Q. l. (59 Vic. No. 2) 6, 10; W. A. a. (56 Vic. No. 8) 206; N. Z. 303, 308.

Notice of removal of office or substitution of agent to be given. 12. 1. When and so often as any such registered office shall be removed, the like declaration and notice shall be made and given as is hereinbefore required with reference to the registration of a company. **2.** When and so often as any other person shall be substituted for the registered agent of such company, the like declaration and notice shall, within a calendar month from the date on which the power or sub-power of attorney in favour of such person shall be executed or shall arrive in Tasmania, be made and given as is hereinbefore required with respect to the registration of a company. **3.** If any attorney of a foreign company shall fail to comply with the provisions of this section he shall be liable to a penalty of five pounds for every day on which any business of the company is carried on, until such provisions are complied with. — E. § 274; N. S. W. c. (No. 22 of 1906) 12; V. f. (No. 1482) 73; S. A. a. (No. 557) 200; Q. l. (59 Vic. No. 2) 8; W. A. a. (56 Vic. No. 8) 202; N. Z. 302 (2, 5).

Inspection. 13. Every document deposited or filed with the Registrar under this Act shall be open to the inspection of any person on payment of one shilling. — N. S. W. c. (No. 22 of 1906) 7 (4); V. f. (No. 1482) 71 (2); S. A. a. (No. 557) 202; Q. l. (59 Vic. No. 2) 6, 8; W. A. a. (56 Vic. No. 8) 204; N. Z. 300 (2).

Service of notices, etc. 14. All communications and notices may be addressed to the registered office of the company, and service of any notice or legal process at such office shall be deemed to be service upon the company; and any company which carries on business without having a registered office shall be liable to a penalty not exceeding five pounds for every day during which the business is so carried on. — E. § 274; N. S. W. c. (No. 22 of 1906) 12; V. f. (No. 1482) 74; S. A. a. (No. 557) 203; Q. l. (59 Vic. No. 2) 9; W. A. a. (56 Vic. No. 8) 205; N. Z. 302.

Declaration evidence. Power of attorney or notarial copy receivable in evidence. 15. 1. A declaration complying with the provisions of section five sub-section II. and appearing to comply with sub-section III. of the same section, shall, as against the company, be final and conclusive evidence, and for all other purposes shall be *prima facie* evidence of the facts therein stated in pursuance of the same sub-section. **2.** Any power of attorney which (or a notarial copy of which) has been deposited under the provisions of this Act (or any notarial copy of such power of attorney) shall for all purposes be receivable in evidence before any court, person, or tribunal having authority by law to hear and receive evidence, without further proof of the sealing, signature, or other execution thereof. — N. S. W. c. (No. 22 of 1906) 11; V. f. (No. 1482) 72; S. A. a. (No. 557) 204; Q. l. (59 Vic. No. 2) 6, 10; W. A. a. (56 Vic. No. 8) 206, b. (60 Vic. No. 2) 4; N. Z. 303, 308.

Company to give due notice of intention to cease carrying on business. 16. 1. Before any foreign company shall voluntarily cease to carry on business in Tasmania, at least three months' notice by its attorney or sub-attorney of its intention to do so shall be published in two consecutive issues of the *Gazette* and of some newspaper published in Hobart and some newspaper published in Launceston; and copies of such *Gazette* and newspapers shall be forwarded to and be retained by the Registrar. 2. For three months after the last publication of such legal notice, proceedings, notices, or other documents may be served on the attorney of the company, or, if there be no such attorney, by leaving the same at any office or place of business where the company last carried on business prior to the publication of such notice. — N. S. W. c. (No. 22 of 1906) 11, 13; V. f. (No. 1482) 72, 73; S. A. a. (No. 557) 205; Q. l. (59 Vic. No. 2) 9; W. A. a. (56 Vic. No. 8) 209; N. Z. 307.

Statutory declaration of attorney to be sufficient proof of non-revocation. 17. A statutory declaration made by the attorney of any foreign company appointed under power of attorney complying with Section five, Sub-section I. or by a sub-attorney complying with Section five, Sub-section VI., of the said section, that he has not received any notice or information of the revocation of the power or sub-power of attorney, or of the winding-up or dissolution of the company, shall, as against the company, be conclusive proof and in favour of the company shall be *prima facie* evidence that no such revocation, winding-up, or dissolution has taken place. — N. S. W. c. (No. 22 of 1906) 11, 13; V. f. (No. 1482) 72, 73; S. A. a. (No. 557) 206; W. A. a. (56 Vic. No. 8) 209; N. Z. 306.

Evidence of incorporation of company. 18. 1. A certificate of incorporation purporting to be under the hand of an officer authorised by the law of the country in which a foreign company purports to be incorporated to grant such certificate duly certified by declaration written upon such certificate or annexed thereto, and made or purporting to be made by one of the directors or the general manager, superintendent, or secretary of such company, or any other person acting in a similar capacity, before a notary public, or British consul, or vice-consul, or consular agent, or other person lawfully authorised to take such declaration, shall, as against the company, be conclusive evidence and for all other purposes be *prima facie* evidence that such company has been duly incorporated. 2. The date of incorporation mentioned in such certificate or in such declaration, or, if no such date be mentioned, then the date of such certificate or the date of such declaration as aforesaid, shall be deemed to be date at which such company was incorporated. 3. In the absence of a certificate of incorporation, a copy of any act of incorporation or document of similar effect to a certificate of incorporation under which the company purports to be incorporated, duly certified to either: a) As by sub-section 1 of this section provided with regard to the certificate of incorporation, or b) By a certificate purporting to be under the hand of an officer authorised by the law of the country in which a foreign company purports to be incorporated, to grant a certificate of the subsistence of such an act or document, and which certificate (or, in the event of several certificates being appended, the last in order of such certificates) shall be verified by the certificate of a notary public, or of a British consul, vice-consul, or consular agent, shall be equivalent to a certificate of incorporation under the same sub-section. — N. S. W. c. (No. 22 of 1906) 11; V. f. (No. 1482) 72; S. A. a. (No. 557) 207; Q. l. (59 Vic. No. 2) 6, 10; W. A. a. (56 Vic. No. 8) 210; N. Z. 308.

Trustees and executors company to deposit sum with Treasurer. Registration of secured assets. 19. 1. Every foreign company which shall carry on business within Tasmania as a trustee and executors company shall deposit with the Treasurer of Tasmania the sum of five thousand pounds, to be invested by him in such security approved by the Treasurer as may be indicated by the company which shall receive the income therefrom, and the Registrar shall not issue a certificate of registration to any such company as is in this section mentioned until such deposit shall have been made by or on behalf of such company; and the Treasurer shall retain such deposit until such company shall acquire secured assets in Tasmania of the value of fifteen thousand pounds, and shall be registered under this Act as possessing such assets in Tasmania, when the sum so deposited shall be refunded. 2. Every such company as is in this section mentioned may be registered under this Act as a company having secured assets in Tasmania by lodging with the Registrar a memorandum in the form in the Schedule 3, signed by the chairman and the principal officer or agent managing the business of the company in Tasmania; and the Registrar shall

register such memorandum in "The Foreign Companies Register Book", and a copy of every such memorandum shall be forthwith published in the *Gazette*. — Cp. j. (5 Edw. 7, No. 35) § 2, *infra*.

Secured assets in Tasmania primarily charged with liabilities in Tasmania. 20. In the case of every company registered under this Act as a company having secured assets in Tasmania, such secured assets to the amount at which the same shall from time to time be registered shall be primarily charged with the payment or satisfaction of all the liabilities of the company in Tasmania; and no part of such secured assets shall after such registration be removed from Tasmania or be applied in payment of any liabilities of the company other than those so charged as aforesaid until the whole of such last-mentioned liabilities shall be paid in full; but nothing herein shall limit or affect the application of any such assets in making or varying any investment thereof in Tasmania. Any director, agent, officer, or servant of any company wilfully committing or aiding or assisting in the commission of any breach of this section shall be deemed guilty of a breach of trust, and be held liable to replace the amount of all such secured assets as shall be by him or with his aid and assistance removed from Tasmania or applied contrary to the provisions of this section, and shall also be deemed guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of the Court to be imprisoned for any term not exceeding three years, or to a penalty not exceeding five hundred pounds.

Assets of foreign companies in Tasmania. 21. Every foreign company which shall carry on any business in Tasmania shall keep a separate account of all the business transacted in Tasmania, and of the entire assets of the company in Tasmania, whether registered as secured assets or not; and in the event of the company becoming bankrupt or being ordered to be wound up in Tasmania, the entire assets of the company in this Colony shall be applied, so far as the same will extend, in or towards satisfaction of the liabilities of the company in Tasmania; and no part of such assets shall be applied in payment of any liabilities of the company incurred elsewhere than in Tasmania until the whole of the liabilities incurred in Tasmania shall be paid in full. If any such company is adjudged bankrupt, or ordered to be wound up elsewhere than in Tasmania, then the same company, so far only as regards its assets and liabilities in Tasmania, may, upon the application of one or more creditors, be ordered to be wound up in Tasmania in like manner as if such company were registered under *The Companies Act, 1869*; and proof of such company having been so adjudged bankrupt or ordered to be wound up shall be conclusive evidence that it is unable to pay its debts. Provided, that nothing contained in this section shall be held to make any alteration in the law now applicable to any company incorporated in Great Britain or Ireland, and carrying on business in Tasmania at the time of the passing of this Act.

Life assurance companies. 22. Nothing in this Act contained shall exempt any foreign life assurance company from any of the provisions of *The Life Assurance Companies Act, 1874*, or any amendment thereof.

Registrar to keep a register book. 23. The Registrar shall keep for the purposes of this Act a register book to be called "The Foreign Companies Register Book", in which he shall enter every memorandum or other document deposited or lodged with him under the provisions of this Act, and shall record therein the date of the registration of each company, and sign the same.

Time within which certain companies must comply with provisions of Act. 24. Any company incorporated in, or which shall have its head office or principal place of business in Great Britain or Ireland, or elsewhere than in Australia and New Zealand, and carrying on business in Tasmania at the commencement of this Act, need not comply with any of the provisions of this Act until the expiration of one year after such commencement. — S. A. a. (No. 557) 209; W. A. a. (56 Vic. No. 8) 212.

Time within which other companies must comply with provisions of Act. 25. Any company incorporated in, or which shall have its head office or principal place of business in Australia or New Zealand, and carrying on business in Tasmania at the commencement of this Act, need not comply with any of the provisions of this Act until the expiration of six months after such commencement.

Contracts made by the agent to be binding on the company. 26. Every contract made by the agent for the time being of any foreign company acting within the scope of his authority on behalf of such company shall be binding upon such company and upon the assets thereof as herein provided, and such assets may be

seized and sold in execution in any action against such company upon any such contract.

Contracts how made, varied, or discharged. 27. Contracts on behalf of any foreign company may be made, varied, or discharged, as follows; that is to say: I. Any contract which if made between private persons would be by law required to be in writing under seal, may be made, varied, or discharged in the name and on behalf of the company in writing under the hand of the agent of such company; II. Any contract which if made between private persons would be by law required to be in writing and signed by the parties to be charged therewith, may be made, varied, or discharged in the name and on behalf of the company in writing signed by the agent of such company; III. Any contract which if made between private persons would by law be valid although made by parol only and not reduced into writing, may be made, varied, or discharged by parol in the name and on behalf of the company by the agent of such company; and all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors and all other parties thereto, their heirs, executors, or administrators (as the case may be).

Application of sections twenty-six and twenty-seven. 28. In the case of any foreign company carrying on business in Tasmania at the commencement of this Act, the provisions of sections twenty-six and twenty-seven of this Act shall apply to any contract which shall have been made in Tasmania on behalf of such company by any duly authorised agent of such company (acting within the scope of his authority) within any period not exceeding five years immediately prior to the commencement of this Act.

Effect on contracts of company not complying with Act. 29. If any foreign company shall, except as in hereinbefore provided, carry on business contrary to the provisions of this Act, the validity of any contracts, dealings, or transactions in relation to such business shall not be affected by this Act, but such company shall not be entitled to bring or maintain any action, set-off, counter-claim, or legal proceeding in respect of any such contract, dealing, or transaction until it shall have complied with this Act. — S. A. a. (No. 557) 201; W. A. a. (56 Vic. No. 8) 203.

Penalty on persons carrying on business for or on behalf of unregistered companies. 30. Except as hereinbefore provided, no person shall commence to carry on business in Tasmania or enter into any contract or agreement with any other person or company in Tasmania for or on behalf of or in the name of any foreign company which has not complied with the provisions contained in the fifth and ninth sections of this Act; and every person who offends against this section shall be liable to forfeit and pay a penalty not exceeding twenty pounds and not less than five pounds. — E. § 274. — See notes to § 29, *supra*.

[31—32 are repealed by h. (1 Edw. 7, No. 47) § 3, *infra*.]

Registration of powers of attorney not dispensed with. 33. Nothing in this Act contained with respect to powers of attorney shall as regards such powers of attorney be construed to dispense with or derogate from any Act now in force in Tasmania relating to the registration of powers of attorney.

Recovery of penalties. 34. All penalties imposed by this Act may be recovered before any two justices in the mode prescribed by *The Magistrates Summary Procedure Act*.

Schedule.

(1.)

I, the undersigned _____, being the duly appointed attorney of [*here state the name of the foreign company*], do hereby solemnly and sincerely declare that the said company proposes carrying on business in Tasmania.

The name of the agent of the said company is [*here state full Christian name and surname, and place of abode or business*].

The office of the said company in Tasmania is at [*here state the city, town, or place where situate, and the name of the street and number of house, if any*].

The place where the said company was incorporated is [*omit the last nine words if Company unincorporated*].

The situation of the head office is at [*state name of street, etc.*].

The said company has duly complied with section five of *The Foreign Companies Act*.

All which matters I conscientiously believe to be true; and I make this declaration under provisions of *The Statutory Declarations Act, 1837.*

Taken before me, this

day of

18

[Signature].

a Justice of the Peace.

(2.)

THIS is to certify that a foreign company called "The Company, Limited," (or as the case may be), incorporated (or as the case may be) in and carrying on (or about to carry on) business in Tasmania, duly registered the name and place of abode or business of the person appointed by such company as agent to carry on its business in Tasmania, and also the situation of the office of such company in Tasmania on the day of 18, and has duly complied with the provisions of section five of *The Foreign Companies Act*.

The name of the agent is, the office of the company in Tasmania is situated at, and the place where the said company was incorporated [or if unincorporated, state where the company has its head office] is

Given under my hand, this

day of 18.
Registrar of the Supreme Court of Tasmania.

(3.)

THE

COMPANY.

We, the undersigned, hereby make application to register the above-named company under the provisions of *The Foreign Companies Act* as a company having secured assets in Tasmania:

1. The name of the company is
2. The head office or principal place of business of the company is at Street, London [or as the case may be]
3. The head office or principal place of business of the company in Tasmania is at
4. The chairman of the company in Tasmania is [insert name in full, address, and occupation].
5. The directors [or committee of management or managing body] of the company in Tasmania are [insert names in full, addresses, and occupations].
6. The principal officer [or agent] managing the life assurance business of the company in Tasmania is
7. The nominal capital of the company [if any] is pounds in shares of each.
8. The number of shares subscribed for is and the amount per share paid up to this date is
9. The amount of assets of the company now invested in Tasmania, and intended to be appropriated as secured assets within the meaning of *The Foreign Companies Act*, is

Dated this day of 18.

A.B., Chairman.

C.D., Secretary [or Manager, or Agent, or as the case may be.]

Witness to signatures:

E.F.

We, A.B. and C.D., do hereby severally solemnly and sincerely declare that:

1. We are respectively the chairman and secretary [or manager or agent, or as the case may be] of the above-named company.
 2. The above statement is, to the best of our knowledge and belief, true in every particular.
- All which matters we conscientiously believe to be true, and we make this declaration under the provisions of the Act of this Island, intituled *An Act for the Abolition of Extra-judicial and unnecessary Oaths.*

A.B.

C.D.

Taken before me this, etc.

g) 62 Vic. No. 26. An Act to amend The Foreign Companies Act (15th October, 1898).

Short title. 1. This Act may be cited as *The Foreign Companies Act, No. 2.*

— The provisions of the *Bills of Sale Act, 1896*, (60 Vic. No. 52) and the *Bills of Sale Act, 1900* (64 Vic. No. 70) do not apply to debentures issued by any company registered under this Act.

— e. (6 Edw. 7, No. 25) § 5, *supra*.

Interpretation. 2. In this Act the expression "the principal Act" shall mean "*The Foreign Companies Act*," and the word "company" in this Act and in the

principal Act shall include any unincorporated company or association of persons which may sue or be sued or hold property in the name of the secretary or other officer of the company duly appointed for that purpose.

Certain companies to be deemed to have complied with the provisions of section five of the principal Act. 3. Every foreign company which: I. In pursuance of any Act of the Imperial Parliament, has appointed an agent or attorney in Tasmania with power and authority to sue and be sued on behalf and in the name of the company, and has caused the instrument appointing such agent or attorney to be duly recorded and enrolled in the Supreme Court of Tasmania; or II. In pursuance of any Act of the Parliament of Tasmania, has delivered to the Registrar a memorial of the names of every agent authorised to act as the attorney of the company in Tasmania, and has otherwise complied with all the requirements of the same Act in reference to such company; shall be deemed to have complied with the provisions of section five of the principal Act. — See T. f. (59 Vic. No. 17) § 5 and notes.

Registrar to give certificate. 4. The Registrar shall, upon application by the registered attorney or agent of any such company as is mentioned in section three of this Act, deliver to such attorney or agent a certificate in the form given in the Schedule I thereto, and such certificate shall be taken and allowed as evidence in all courts that the provisions of section five of the principal Act have been complied with, without proof of the appointment of the Registrar or of his signature.

— See T. f. (59 Vic. No. 17) § 5 and notes.

Agent or attorney to deposit documents with Registrar. Penalty. 5. The agent or attorney in Tasmania of every foreign company which has been registered under the provisions of the principal Act shall, on or before the thirty-first day of December, in the year One thousand eight hundred and ninety-nine, and the agent or attorney of every foreign company which shall hereafter desire to be registered under the principal Act shall, in addition to the documents mentioned in section five of the principal Act, deposit with the Registrar a written or printed copy of the deed or memorandum and articles of association or other instrument declaring the constitution and functions of the company, signed by the agent or attorney; and such signed copy of such deed or memorandum and articles of association or other instrument declaring the constitution and functions of the company shall be taken and allowed in evidence in all courts as a true copy of such deeds or memorandum and articles of association or other such instrument as aforesaid without proof of the signature of the agent or attorney. If any attorney or agent of a foreign company shall fail to comply with the provisions of this section, he shall be liable to a penalty of five pounds for every day on which any business of the company is carried on until such provisions are complied with. — See T. f. (59 Vic. No. 17) § 5 and notes.

Registration of foreign companies. 6. In lieu of complying with the provisions of section five of the principal Act, any foreign company may cause itself to be registered in Tasmania in the manner hereinafter prescribed. — See T. f. (59 Vic. No. 17) § 5 and notes.

Documents to be deposited in office of Registrar of Supreme Court. 7. A foreign company desiring to be so registered shall cause to be lodged in the office of the Registrar, either: I. A certificate of incorporation under the hand of the Registrar of Joint Stock Companies or other proper officer of the country of incorporation, and under the seal (if any) of his office, together with a copy, certified by such Registrar or other officer, of the memorandum and articles of association, deed of settlement, or other instrument declaring the constitution and functions of the company; or II. If the company is incorporated or constituted in the country of incorporation or constitution by an Act or Ordinance, a copy of such Act or Ordinance purporting to be printed by the Queen's Printer or the Official Printer for the Government of the country of incorporation or constitution, or certified under the hand of a notary public and under the seal of his office; or III. If the company is incorporated by Royal Charter, a copy of such Royal Charter certified by a notary public; or IV. Such evidence of incorporation or constitution as the Registrar may require; together with, in any of the three last-mentioned cases, a copy of every deed of settlement or other instrument declaring the constitution and functions of the company. — See T. f. (59 Vic. No. 17) § 5 and notes. See also k. (7 Edw. 7, No. 25) § 3, *infra*.

Fees on registration. 8. The Governor in Council may from time to time prescribe what fees shall be payable upon the registration of a foreign company under

the principal Act or this Act, but such fees shall not exceed the fees payable upon the registration of a joint stock company under the laws of Tasmania. — See T. f. (59 Vic. No. 17) § 5 and notes, and Q. 1. (59 Vic. No. 2) § 5.

Certificate of registration to be issued. 9. Upon the lodging of such evidence of incorporation as is hereinbefore prescribed, and upon payment of the prescribed fee, the Registrar shall issue a certificate, under his hand and the seal of his office, in the form following, or to the like effect:

“I _____, Registrar of the Supreme Court of the Colony of Tasmania, hereby certify that the _____, duly incorporated or constituted on _____ under the laws of _____, has this day been registered in the office of the Registrar of the Supreme Court of the Colony of Tasmania, in accordance with the provisions of *The Foreign Companies Act, No. 2*.

Given under my hand and seal of office, at _____
this _____ day of _____ 18 _____.

A.B. Registrar.”

A copy of such certificate shall be published in the *Gazette*. Any company registered under the principal Act may also publish in the *Gazette* a copy of the certificate of registration issued to it thereunder. — See T. f. (59 Vic. No. 17) § 11 and note.

Copy of document with Registrar's certificate to be evidence. 10. A copy of any deed or memorandum or articles of association or other instrument declaring the constitution and functions of any company registered under this Act or the principal Act, accompanied by a certificate from the Registrar that such document is a true copy of the like document deposited with him or lodged in his office as required by this Act, shall be taken and allowed in evidence in all courts as a true copy of such document without proof of the appointment of the Registrar or his signature. The Registrar shall, upon application and payment of a fee of five shillings, affix such certificate as aforesaid to any true copy of any such document as aforesaid. — See T. f. (59 Vic. No. 17) 15 and note.

Proof of appointment of agent. 11. Every foreign company desiring to be registered under the provisions of this Act file shall file every power of attorney appointing any agent or agents to act on behalf of such company, or a notarial copy thereof under the provisions of *The Powers of Attorney Act*, and a copy of every power of attorney or notarial copy thereof so filed, accompanied by a certificate from the Registrar of Deeds that such document is a true copy of the power of attorney or notarial copy thereof so filed, shall for all purposes be receivable in evidence before any court, person, or tribunal having authority by law to hear and receive evidence, without further proof of the appointment of the Registrar or his signature, or of the sealing, signature, or execution of the original power of attorney purporting to be sealed and executed by the company. The Registrar shall, upon application and payment of a fee of five shillings, affix such certificate as aforesaid to any true copy of such document as aforesaid. — See T. f. (59 Vic. No. 17) § 15 and notes.

Effect of registration. Proviso. 12. Every foreign company registered under the provisions of this Act or the principal Act shall, subject to the provisions herein-after and in the principal Act contained, have and be entitled to the same rights, powers, capacities, and privileges, and shall be subject to the same obligations, liabilities, and disabilities, as if it had been incorporated under the laws of *Tasmania*; and, in addition, every foreign company which is incorporated or established according to the laws of some part of Her Majesty's Dominions other than Tasmania shall, subject as aforesaid, be entitled to hold and convey land. Provided, however, that nothing in this Act shall have the effect of enabling any such company to take or hold land in Tasmania except under and subject to such conditions (if any) as are imposed by the constitution of the company: And provided further, that nothing in this Act shall have the effect of binding any such company to any contract entered into by a registered agent or agents appointed for specified purposes only in excess of the authority conferred upon such agent or agents, but such company may sue or be sued upon any contract entered into by such company, notwithstanding the fact that such contract has not been made on behalf of such company by such registered agent or agents appointed for specified purposes only. — See T. f. (59 Vic. No. 17) § 4 and notes.

Company to register name of agent and situation of office. 13. Every foreign company which shall claim the benefit of section three of this Act, or which shall be registered under the provisions of this Act, shall register the names and places of abode or business of the person or several persons appointed by such company under a power of attorney to carry on the business of such company in Tasmania, and also the situation of the office or one of the offices of such company in this Colony; and the person or several persons so registered shall be deemed to be the registered agent or the several registered agents, as the case may be, of such company in Tasmania, and such office shall be the registered office of such company for the purposes of this Act. If any agent or attorney of any foreign company shall fail to comply with the provisions of this section he shall be liable to a penalty not exceeding five pounds for every day during which such company shall carry on business in Tasmania. — See T. f. (59 Vic. No. 17) § 9 and notes.

Mode of registration. Schedule 2. 14. The registration of every such agent or agents and office shall be effected in the following manner: The duly appointed attorney or other person or persons or some one of them duly appointed to act as the agent or agents of the company in *Tasmania* shall make and sign a declaration in the form given in the Schedule 2, or to the like effect, before a justice of the peace, and such declaration when so made and signed shall be published in two consecutive numbers of the *Gazette*, and copies of such *Gazette* shall be forwarded to and be retained by the Registrar. Every person who wilfully makes any such declaration falsely in any particular shall be guilty of a misdemeanour, and on conviction thereof be liable to be imprisoned for any term not exceeding two years. — See T. f. (59 Vic. No. 17) § 10 and notes.

Proof of registration. Schedule 3. 15. A certificate in the form given in the Schedule 3, or to the like effect, purporting to be under the hand of the Registrar (who is hereby required to give such certificate to any person applying for the same on payment of one shilling), and which certificate shall set forth the name of the agent or agents of, and the situation of the office of the company in Tasmania, shall as against the company be conclusive evidence, and as against all other parties shall be *prima facie* evidence, in all courts that the foreign company therein referred to has been duly incorporated, or not, as the case may be, that the person or persons named therein as agent or agents is or are the agent or agents of such company in Tasmania, and that the office of such company in Tasmania is situate as therein stated, and that such agent or agents and office have been duly registered under the provisions of this Act, and of the time of registration, and of all other particulars mentioned in such certificate; and evidence of the appointment of the Registrar or of his signature shall not be required. — See T. f. (59 Vic. No. 17) § 11 and notes.

Notice of removal of office or substitution of agent to be given. 16. 1. When and so often as any such registered office shall be removed, notice of such removal shall be made and given to the Registrar, and shall be recorded by him. 2. When and so often as any other person shall be appointed to fill the vacancy caused by the death or resignation of the registered agent of any foreign company, or shall be substituted for the registered agent of any such company, a declaration and notice shall be made and given within a calendar month from the date on which the power of attorney or other instrument or document appointing such person Agent of the company in Tasmania shall be executed or shall arrive in Tasmania; such declaration shall be in the form of Schedule 4. 3. When any registered foreign company shall have, by power of attorney duly filed, appointed any other person to act as substitute attorney or agent of such company during the absence from Tasmania of the registered agent, such person so appointed to act as substitute attorney or agent as aforesaid shall be deemed for all purposes to be the registered agent of such company during the absence from Tasmania of the registered agent if and when a notice shall have been published in one number of the *Gazette*, a copy of which shall be sent to and retained by the Registrar, notifying the name and place of abode or business of such substitute attorney or agent. 4. If any attorney or agent of a foreign company shall fail to comply with the provisions of this section he shall be liable to a penalty of five pounds for every day on which any business of the company is carried on, until such provisions are complied with. 5. The provisions of this section shall apply to every foreign company registered under this Act or the principal Act. — See T. f. (59 Vic. No. 17) § 12 and notes.

Service of process on registered foreign companies. 17. Any writ or other process issued against a registered foreign company, or any notice addressed to a registered foreign company, may be served by being left at the registered office of the company with some person there; or, if there be no registered office, or no person can be found at the registered office for two consecutive days during ordinary business hours, by being affixed in the office of the Registrar of the Supreme Court or other court form which the process is issued. — See T. f. (59 Vic. No. 17) § 14 and notes.

Disabilities of companies not registered. 18. On and after the first day of July, One thousand eight hundred and ninety-nine, a foreign company shall not, except by virtue of some Act of the Parliament of Tasmania, or some Act or Ordinance having the force of law in Tasmania, or some Royal Charter extending to and having effect in Tasmania, be competent to take, hold, convey, or transfer land in Tasmania for an estate of freehold, unless such company has been registered in Tasmania under the principal Act or this Act, and is a company incorporated or established according to the laws of some part of Her Majesty's dominions other than Tasmania.

Proof of registration. 19. Production of *Gazette* purporting to contain a copy of a certificate issued under the provisions of this Act or of the principal Act shall be sufficient *prima facie* evidence for the purpose of proceedings in any court of justice or for any other purpose, of the due registration of the company mentioned in such certificate. — See notes to T. f. (59 Vic. No. 17) § 10, 15.

Companies may be wound up. 20. The Supreme Court shall have jurisdiction to wind up a registered foreign company so far as it carries on operations within Tasmania. — N. Z. 310—321. See T. f. (59 Vic. No. 17) § 21.

Application of proceeds of lands of company. 21. In the event of the winding-up of a registered foreign company, all land of the company within Tasmania shall, subject to any valid mortgage, encumbrance, or charge subsisting thereon, which shall have been duly registered in compliance with *The Registration Act*, be applicable in the first instance in payment and discharge of the debts of the company contracted within Tasmania, in priority to any other debts of the company, except debts secured by any such mortgage, encumbrance, or charge.

Saving of certain past transactions. 22. Every foreign company which has been registered under the provisions of the principal Act, and which holds land in Tasmania at the commencement of this Act, and every foreign company which shall be duly registered under the provisions of this Act, and which holds lands in Tasmania at the commencement of this Act, shall be entitled to the same rights and privileges with respect to such land as if this Act had been in force and the company had been registered under its provisions when the land was first acquired by the company.

Time within which certain companies must comply with provisions of the Act. 23. The time within which any such company as is mentioned in section twenty-four of the principal Act is required to comply with the provisions of that Act or of this Act is hereby extended to the thirty-first day of December, in the year One thousand eight hundred and ninety-nine. — See T. f. (59 Vic. No. 17) § 24 and notes.

Time within which other companies must comply with the provisions of the Act. 24. The time within which any such company as is mentioned in section twenty-five of the principal Act is required to comply with the provisions of that Act or of this Act is hereby extended to the thirtieth day of June, in the year One thousand eight hundred and ninety-nine. — See T. f. (59 Vic. No. 17) § 25.

Appeal. 19 Vic. No. 10. 25. Any person or company aggrieved by any summary conviction under this or the principal Act may appeal therefrom in the mode prescribed in *The Appeals Regulation Act*.

Acts to be read together. 26. This Act and the principal Act shall be read and construed together as one Act.

Schedule.

(1.)

THIS is to certify that a foreign company called “ _____ Company, Limited,” [or, as the case may be] incorporated or constituted [as the case may be] and carrying on [or, about to carry on] business in Tasmania, has complied with the provisions of section five of *The Foreign Companies Act*, as provided by section three of *The Foreign Companies Act*, No. 2.

Given under my hand this

day of

18 .

Registrar of the Supreme Court of Tasmania.

(2.)

I, THE undersigned _____, being the duly appointed attorney [or agent, as the case may be] of [here state the name of the foreign company], do hereby solemnly and sincerely declare that the said company proposes carrying on business in Tasmania.

The name of the agent of the said company is [here state full Christian name and surname, and place of abode or business].

The office of the said company in Tasmania is at [here state the city, town, or place where situate, and the name of the street and number of house, if any].

The place where the said company was incorporated or constituted [as the case may be] [is omit reference to place of incorporation if company unincorporated].

The situation of the head office is at [state name of street, etc.].

The said company has duly complied with the provisions of *The Foreign Companies Act, No. 2.*

All which matters I conscientiously believe to be true; and I make this declaration under the provisions of *The Statutory Declarations Act, 1837.*

Taken before me, at _____, in Tasmania, this _____ day of _____ 18 ____ .
[Signature.]
A Justice of the Peace.

(3.)

THIS is to certify that a foreign company called "The _____ Company, Limited," [or, as the case may be], incorporated or constituted [or, as the case may be] in _____

and carrying on [or about to carry on] business in Tasmania, duly registered the name and place of abode or business of the person appointed by such company as agent to carry on its business in Tasmania, and also the situation of the office of such company in Tasmania, on the _____ day of _____ 18 __, and has duly complied with the provisions of *The Foreign Companies Act, No. 2.*

The name of the agent is _____, the office of the company in Tasmania is situated at _____, and the place where the said company was incorporated or constituted [or if unincorporated, state where the company has its head office] is _____

Given under my hand, this _____ day of _____ 18 ____ .
Registrar of the Supreme Court of Tasmania.

(4.)

I, THE undersigned _____, being the duly appointed attorney [or agent, as the case may be] of [here state the name of the foreign company] do hereby solemnly and sincerely declare:

That the said company was registered in Tasmania under [state title of Act] on the _____ day of _____ 18 ____ .

That I am the agent of the said company [here state whether in succession to or substitution for or to act during the absence from Tasmania of the registered agent].

All which matters I conscientiously believe to be true; and I make this declaration under the provisions of *The Statutory Declarations Act, 1837.*

Taken before me at _____ in Tasmania, this _____ day of _____ 18 ____ .
[Signature.]
A Justice of the Peace.

h) 1 Edw. 7, No. 47. An Act to further amend The Foreign Companies Act (8th January, 1902).

Short title. 1. This Act may be cited as *The Foreign Companies Amendment Act, 1901.*

Interpretation. 2. In this Act "The said Act" shall mean "*The Foreign Companies Act*".

Repeal of Secs. 31 and 32 of 59 Vic. No. 17. 3. Sections thirty-one and thirty-two of the said Act are hereby repealed.

Stamp Duty. 46 Vic. No. 34. Sects. 31, 32, and 33 not to apply. Stamp duty £ 50. Stamp duty on foreign company not carrying on business solely in Tasmania. Registrar not to register foreign companies until stamp duty paid. 4. [As amended by i. (2 Edw. 7, No. 35) § 2.] Except as is hereinafter provided, sections thirty-one, thirty-two, and thirty-three of *The Stamp Duties Act, 1882*, shall not apply to foreign companies registering under the said Act, but in lieu of the provisions contained in the said sections, the following shall be substituted: I. Every foreign company which has not been carrying on business in Tasmania previously to the commencement of this Act and which has not been already registered, shall, before

registration under the said Act, pay to the Treasurer the sum of fifty pounds by way of stamp duty, and no such company shall be registered unless such sum shall be duly paid; II. Every foreign company formed outside Tasmania after the passing of the said Act for the immediate purpose of carrying on business in Tasmania, but with power to carry on business elsewhere than in Tasmania, and which business requires the expenditure of capital in Tasmania, shall, before registration under the said Act, pay to the Treasurer by way of stamp duty the sum of one penny for every pound of the amount of capital to be so expended in Tasmania. Provided that where the amount of such stamp duty shall not amount to fifty pounds, the sum of fifty pounds shall be paid as stamp duty in lieu thereof; III. The Registrar shall not register any such company as is mentioned in sub-sections I. and II. of this section unless and until the person applying to register such company shall produce and deliver to the Registrar the receipt of the Treasurer for the payment of such sum of money as is hereinbefore mentioned; and if the Registrar shall register any such company contrary to this section, he shall be liable to a penalty not exceeding fifty pounds.

Change of name of foreign company may be registered. 5. [As amended by k. (7 Edw. 7, No. 25) § 5.] Every foreign company registered under the provisions of the said Act, which has changed its name in accordance with the law of the country in which it is incorporated, shall register such change of name with the Registrar, who shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of such company, or render defective any legal proceedings instituted or to be instituted by or against such company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name. No stamp duty shall be payable on any application under this section to register a change of the name of any foreign company.

Stamp duty payable by certain companies. 6. Except as hereinbefore provided, every foreign company formed outside Tasmania after the passing of this Act shall, upon registering under the said Act, be subject to sections thirty-one, thirty-two, and thirty-three of *The Stamp Duties Act, 1882*.

Acts to be read together. 7. This Act and the said Act, and every Act amending the same, shall be read and construed together as one and the same Act.

i) 2 Edw. 7, No. 35. An Act to further amend The Foreign Companies Act (20th December, 1902).

Short title. 1. This Act may be cited as *The Foreign Companies Amendment Act, 1902*.

[2 amends h. (1 Edw. 7, No. 47) § 4 and is there incorporated.]

Acts to be read together. 59 Vic. No. 17. 3. This Act and *The Foreign Companies Act*, and every Act amending the same, save as altered or amended by this Act, shall be read and construed together as one and the same Act.

j) 5 Edw. 7, No. 35. An Act to amend The Foreign Companies Act, The Foreign Companies Act, No. 2, and for other Purposes (20th November, 1905).

Short title. 1. This Act may be cited as *The Foreign Companies Amendment Act, 1905*.

Repeal in certain cases of provisions of Foreign Companies Act and Foreign Companies Act, No. 2, which incapacitates foreign trustees and executors company from holding, etc., land. Validation of past conveyances, etc. In certain cases such company relieved from registration, etc. 2. 1. All the provisions of *The Foreign Companies Act*, or *The Foreign Companies Act, No. 2*, which in any way incapacitate or have incapacitated a foreign company, being a trustee and executors company

incorporated or established according to the laws of some part of His Majesty's dominions other than Tasmania, from taking, holding, conveying, transferring, or disposing of land in Tasmania, for an estate of freehold, or which, by imposing any condition or otherwise in any way, render or have rendered any such company incompetent to so take, hold, convey, transfer, or dispose of any land in Tasmania, shall be deemed to be and are hereby repealed, as from the time of the commencement of *The Foreign Companies Act*, so far as relates to any land in Tasmania comprised in any conveyance, transfer, or assurance, or devised by any will, codicil, or other testamentary disposition made or purporting to have been made prior to the passing of this Act, in that part of His Majesty's dominions in which such company shall be incorporated or established as aforesaid, to or in favour of such company. 2. All conveyances, transfers, or assurances of, or dealings with, any such land made or purporting to have been made by any such company since the passing of *The Foreign Companies Act*, shall be as valid and effectual in all respects as if *The Foreign Companies Act*, or *The Foreign Companies Act, No. 2*, had never been passed. 3. No such company shall, by reason of acquiring, holding, or disposing of, or dealing with any such land as aforesaid, be compellable to register or to pay any deposit of money to the Treasurer of Tasmania under the said Acts, or either of them.

k) 7 Edw. 7, No. 25. An Act to further amend The Foreign Companies Act (22d November, 1907).

Short title. 1. This Act may be cited for all purposes as *The Foreign Companies Amendment Act, 1907*.

Interpretation. 2. In this Act, unless the context otherwise indicates, the expression "the said Acts" shall mean and include "*The Foreign Companies Act*", and every Act amending such Act.

Alterations in memorandum, etc., to be lodged with Registrar. 3. Where any foreign company shall, after registration under the said Acts, have made any alteration in the memorandum, articles of association, deed of settlement, or other instrument declaring the constitution and functions of the company, a copy of such alteration, certified in the same manner as is provided in the said Acts, shall be lodged in the office of the Registrar within six months after the commencement of this Act or within three months after such alteration shall have been made.

Act to be retrospective. 4. The provisions of this Act shall extend and apply to alterations made prior to as well as after the passing of this Act.

[5 amends h. (1 Edw. 7, No. 47) § 5, *supra* and is there incorporated.]

4. South Australia. a) 55 & 56 Vic. No. 557. An Act to consolidate and amend the law relating to Companies (17th December, 1892).

Part I. Preliminary.

Short title. 1. This Act may be cited as *The Companies Act, 1892*.

Division. 2. This Act is divided into parts, as follows: Part I: Preliminary. Part II: Constitution and incorporation of companies. Part III: Management and administration. Part IV: Companies authorised to register under this Act. Part V: The winding-up of companies. Part VI: The winding-up of unregistered companies. Part VII: Striking defunct companies off the Register. Part VIII: Foreign companies. Part IX: No-liability companies. Part X: Liability of promoters and directors. Part XI: Miscellaneous.

Interpretations. 3. [As amended by b. (No. 576) § 2, 3.] In this Act and the Schedules hereto, and any rules made hereunder, the following terms have the meanings hereinafter respectively assigned to them, if not inconsistent with the context or subject matter: "Articles" means the articles of association of a company. "Company" in Parts V. and VII. means a company formed or registered under this Act, *The Companies Act, 1864*, or *The Mining Companies Act, 1881*. In Part III. "Company" means a company registered under this Act, or under *The Companies*

Act, 1864. "Contributory" means every person liable to contribute to the assets of a company in the event of the same being wound up, and shall also, in all proceedings for determining the persons who are to be deemed contributories and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory. "Court" means the Supreme Court, or any Judge thereof. "Creditor" means a person who, in the event of the winding-up of a company, would be entitled to prove under such winding-up. "Deed of settlement" shall include any contract of co-partnership or other instrument constituting or regulating a company and not being an Act of Parliament or Royal Charter or Letters Patent, or the articles of association of a company heretofore incorporated under *The Companies Act, 1864*, or incorporated under this Act. "Foreign company" shall mean any joint stock company or corporation duly incorporated for trading or other business purposes according to the laws in force in the country in which it is incorporated, other than a Company incorporated in South Australia, and shall extend to and include any unincorporated joint stock company which may sue or be sued, or hold property in a common name, and which shall not have its head office or principal place of business in South Australia. "Judge" means a Judge of the Supreme Court. "Liability" in Part V. includes any compensation for work or labor done; any obligation or possibility of an obligation to pay money or money's worth pursuant to or on the breach of any express or implied covenant, contract, agreement, or undertaking, whether such breach does or does not occur, or is or is not likely to occur or capable of occurring before the conclusion of the winding-up of a company and generally includes any express or implied covenant, contract, agreement, engagement, or undertaking to pay, or capable of resulting in the payment of money or money's worth, whether such payment be, as respects amount, fixed or unliquidated, and payable in one sum or by instalments, or periodical payments, as respects time, present or future, certain, or dependent on any one contingency, or two or more contingencies, or as to mode of valuation capable of being ascertained by fixed rules, or assessable only as matter of opinion. "Limited company" means a company the liability of the members of which is by the memorandum limited to the amount (if any) unpaid on the shares respectively held by them. "Memorandum" means the memorandum of association of a company under this Act, or *The Companies Act, 1864*. "Mining purposes" means the purpose of obtaining any metal or mineral by any mode whereby soil, earth, rock, or stone may be disturbed, or smelted, refined, crushed, or otherwise dealt with. "Month" means calendar month. "No-liability company" means a company formed with no liability on the part of its members. "Prescribed" means prescribed by rule. "Registrar" means the Registrar of Companies and any Acting or Deputy Registrar of Companies. "Registration office" means the office for the registration of companies. "Representative" means an executor or administrator, and includes the Public Trustee in cases where the Court shall have authorised him to administer the estate of a deceased person. It also includes "devisee" and "heir at law" where a devisee or heir at law is liable as a contributory. "Rule" means a rule contained in the seventh Schedule to this Act, or made under the authority of this Act. "Shareholder" shall include member. "Special resolution" means a resolution passed at a general meeting of a company of which notice has been duly given specifying the intention to propose such resolution, and at which such resolution is passed by a majority of not less than three-fourths of the votes of such members of the company for the time being entitled according to the articles of the company to vote as may be present in person, or (in cases where the articles allow proxies) by proxy. "Unlimited company" means a company formed on the principle of having no limit placed on the liability of its members. — E. §§ 69, 285; N. S. W. a. (No. 40 of 1899) 247; V. a. (No. 1074) 52; f. (No. 1482) 70 (1); T. a. (33 Vic. No. 22) 56; Q. e. (27 Vic. No. 4) 50; Q. l. (59 Vic. No. 2) 2; c. (No. 22 of 1906) 2; W. A. a. (56 Vic. No. 8) 3; N. Z. 91 1297.

Repeal. 4. 1. The Acts mentioned in the first Schedule to this Act are repealed. Such repeal shall not affect: I. Anything done under any Act hereby repealed; II. The incorporation of any company under any Act hereby repealed; III. Any provision relating to evidence contained in any repealed Act except where such provision is inconsistent with this Act; IV. Any right or privilege acquired or liability incurred under any Act hereby repealed; V. Any pecuniary penalty, forfeiture, or other punishment incurred in respect of any offence against any Act hereby repealed; VI. Any disability incurred under any Act hereby repealed; VII.

Table A in the first Schedule annexed to *The Companies Act, 1864*, so far as the same applies to any company existing at the commencement of this Act. Any proceedings begun under the repealed Acts, or any of them, may be continued and concluded as though this Act had not been passed. 2. The repeal effected by this section shall not affect any of the provisions of the enactments mentioned in the second Part of the first Schedule to this Act in so far as such enactments relate to companies already registered under *The Miners Act, 1865*, or *The Mining Companies Act, 1881*, except to the extent to which the same enactments relate to the winding-up of no-liability companies registered under the last mentioned Act and not under liquidation at the coming into operation of this Act. — E. § 287; N. S. W. a. (No. 40 of 1899) 3; V. a. (No. 1074) 2; T. a. (33 Vic. No. 22) 236—239; W. A. a. (56 Vic. No. 8) 4; N. Z. 327.

Act not to apply to certain societies and companies. 5. Except as to Parts I., VI., VIII., X. and XI., and the provisions therein contained or incorporated, this Act shall not apply to any friendly society, benefit society, or building society, nor to any company or co-partnership which carries on the business of life assurance or fire or marine insurance, either alone or together with any other business, unless such company is already registered under *The Companies Act, 1864*; nor to any company or co-partnership formed or to be formed for the purpose of carrying on the business of banking, nor shall it affect *The Associations Incorporation Act, 1890*, or *The Industrial and Provident Societies Act, 1864*. — E. § 1; N. S. W. a. (No. 40 of 1899) 3, 4; V. a. (No. 1074) 3, 4; T. a. (33 Vic. No. 22) 3, 4; Q. e. (27 Vic. No. 4) 2, 3; W. A. a. (56 Vic. No. 8) 5; N. Z. 3, 4.

References in Acts to The Companies Act, 1864, to be read as references to this Act. 6. Where any unrepealed Act enacts that the provisions of *The Companies Act, 1864*, shall apply to life assurance or other companies, or requires or empowers anything to be done by reference to such provisions, such enactments shall be deemed to refer to the corresponding portions of this Act, and the reference in the 34th section of the *Life Assurance Companies Act, 1882*, to the 42d section of *The Companies Act, 1864*, shall be read as a reference to the 42d section of this Act.

Prohibition of partnership exceeding a certain number of persons. 7. No company, association, or partnership consisting of more than twenty persons, shall be formed after the commencement of this Act for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or unless it is formed or constituted under the provisions of some Act of the Imperial Parliament, or of the Parliament of the said Province, or by Letters Patent, or Royal Charter. — E. § 1; 1 & 2 Vic. c. 10, § 1; N. S. W. a. (No. 40 of 1899) 4; V. a. (No. 1074) 4; T. a. (33 Vic. No. 22) 4; Q. e. (27 Vic. No. 4) 3; W. A. a. (56 Vic. No. 8) 7; N. Z. 5.

Appointment of Registrar of Companies. Registrar's seal. 8. 1. The Governor may appoint a Registrar of Companies for the purposes of this Act; and until such appointment shall be made, the Master of the Supreme Court shall be such Registrar. The Governor may also appoint an Acting or Deputy Registrar of Companies. 2. The Registrar of Companies shall have a seal, and such seal shall bear the words "Registrar of Companies, South Australia". — E. §§ 243, 289; N. S. W. a. (No. 40 of 1899) 166; V. a. (No. 1074) 17; T. a. (33 Vic. No. 22) 206; Q. e. (27 Vic. No. 4) 172; W. A. a. (56 Vic. No. 8) 8; N. Z. 6, 7.

Part II. Constitution and Incorporation of Companies.

Memorandum of association.

Mode of forming Company. 9. Any five or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company with or without limited liability or, as to a company formed for mining purposes, with no liability. — E. § 2; N. S. W. a. (No. 40 of 1899) 5; V. a. (No. 1074) 5; T. a. (33 Vic. No. 22) 7; Q. e. (27 Vic. No. 4) 6; W. A. a. (56 Vic. No. 8) 10; N. Z. 13.

Mode of limiting liability of members. 10. The liability of the members of a company with limited liability shall be limited to the amount, if any, unpaid on the shares respectively held by them. — E. § 2; N. S. W. a. (No. 40 of 1899) 1;

V. a. (No. 1074) 6; T. a. (33 Vic. No. 22) 7; Q. e. (27 Vic. No. 4) 6; W. A. a. (56 Vic. No. 8) 10; N. Z. 14.

Requisites of memorandum. 11. 1. The memorandum of a limited or no-liability company shall contain: I. The name of the company, with the word "limited", or the word "no-liability", as the case may require, as the last word; II. The objects for which the company is established; III. A declaration that the liability of the members is limited, or that the members take no liability, as the case may require; IV. The amount of the capital of the company, divided into shares of a certain fixed amount. 2. The memorandum of an unlimited company shall contain I. The name of the company; II. The objects for which the company is established. — E. § 3, 5; N. S. W. a. (No. 40 of 1899) 7; V. a. (No. 1074) 7; T. a. (33 Vic. No. 22) 8; Q. e. (27 Vic. No. 4) 7; W. A. a. (56 Vic. No. 8) 11; N. Z. 15, 17, 18. — **ULTRA VIRES.** — The shareholders by a resolution passed at a general meeting can not authorise the directors to forfeit all shares tendered to them for forfeiture and on which all calls had been paid up to date. Such a resolution is *ultra vires*. The directors can not, without the consent of every member of the company exercise the power of forfeiting shares where no ground of forfeiture existed. — In re Mattawarrangala Copper Mining Co., 8 S. A. L. R. 137. Where the articles of association authorise the directors to make calls not exceeding, at any one time, a specified sum, but provide further that a majority of shareholders present at any general or special meeting may authorise additional calls for the purpose of carrying on the business of the company, and there is nothing in the memorandum of association to warrant the latter power, a resolution passed as provided for in the articles of association is *ultra vires*. — In re Devon Consols Mining Co., 12 S. A. L. R. 167. See also Burrawing Copper Mining Co., Ltd. v. Harvey, 9 S. A. L. R. 14.

Each subscriber to take at least one share in company with share capital. 12. As to all companies having capital divided into shares, each subscriber to the memorandum shall take and subscribe for one share at least, and shall write opposite to his name the number of shares he takes — E. § 3, 5; N. S. W. a. (No. 40 of 1899) 7; V. a. (No. 1074) 7; T. a. (33 Vic. No. 22) 8; Q. e. (27 Vic. No. 4) 7; W. A. a. (56 Vic. No. 8) 13; N. Z. 18.

Limited company may have directors, etc., with unlimited liability. 13. In the case of a limited company the liability of the directors or manager, or managing director, may be unlimited, in which case, in lieu of the declaration referred to in section 11, sub-section III., the memorandum shall contain a declaration that the liability of ordinary members is limited, but that the liability of the directors, manager, or managing director, as the case may require, is unlimited. — E. § 60; N. S. W. a. (No. 40 of 1899) 34; W. A. a. (56 Vic. No. 8) 14; N. Z. 82.

Signature to and effect of memorandum. Memorandum not to be altered save as provided. 14. 1. The signature of each subscriber to the memorandum shall be attested, and the memorandum shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act. 2. No alteration shall be made by any company in its memorandum save as hereinafter provided. — E. §§ 6, 7; N. S. W. a. (No. 40 of 1899) 10, 11; V. a. (No. 1074) 12, 13; T. a. (33 Vic. No. 22) 11, 12; Q. e. (27 Vic. No. 4) 11; W. A. a. (56 Vic. No. 8) 15; N. Z. 19, 20, 42. — Before increasing the capital of a company by the issue of additional shares no special resolution is necessary where the articles of association authorize the same. — Van Creek G. M. Co. v. Wadham, 8 S. A. L. R. 141.

Articles of association.

Signature and effect of articles. Regulations to be prescribed by articles of association. 15. 1. The memorandum may, in the case of a limited company, and shall, in the case of a no-liability company or an unlimited company, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum, and prescribing regulations for the company: Provided that in the case of a company which has passed a memorandum or articles at any meeting convened under section 17, no memorandum or articles shall be filed other than the memorandum or articles as passed at such meeting, or as altered at a subsequent meeting under the same section. 2. The articles shall be expressed in separate paragraphs numbered in arithmetical progression, and may adopt all or any of the regulations contained in the Table marked A in the second Schedule hereto. They shall, in the case of an unlimited company that has a capital divided into shares, state the

amount of capital with which the company proposes to be registered, and in the case of an unlimited company, that has not a capital divided into shares, state, for the purpose of enabling the Registrar to determine the fees payable on registration, the number of members with which the company proposes to be registered. — E. §§ 10, 12; N. S. W. a. (No. 40 of 1899) 12; V. a. (No. 1074) 14; T. a. (33 Vic. No. 22) 14; Q. a. (27 Vic. No. 4) 14; W. A. a. (56 Vic. No. 8) 16; N. Z. 22.

Application of Table A. 16. In the case of a limited company, if the memorandum be not accompanied by articles, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A in the second Schedule hereto, such regulations shall, so far as applicable, be deemed to be the articles of the company in the same manner and to the same extent as if they had been registered as such. — E. § 11; N. S. W. a. (No. 40 of 1899) 13; V. a. (No. 1074) 13; T. a. (33 Vic. No. 22) 15; W. A. a. (56 Vic. No. 8) 17; N. Z. 2.

Passing memorandum and articles before incorporation. 17. 1. The persons who have agreed to become members of a company may before incorporation pass a memorandum with or without articles not inconsistent with this Act for the purposes of the company, or alter any such memorandum or articles already passed, at a meeting to be convened for that object. 2. The following provisions shall apply to any such meeting: a) A chairman shall be appointed by show of hands of those present and entitled to vote; b) Every proposition shall be first submitted to a show of hands on which each person personally present and entitled to vote shall have one vote; c) The chairman's declaration that any proposition is carried or lost shall be conclusive evidence of the fact, unless a poll is demanded by a person entitled to vote; d) On such poll being demanded it shall be taken either forthwith or at such time and place as the majority of persons present and entitled to vote shall, by show of hands, determine. The chairman's decision as to such determination shall be conclusive evidence thereof; e) On such poll in case of a company having a capital divided into shares, each person entitled to vote shall have votes in respect of the shares which he has agreed to take according to the following scale: For every share up to ten, one vote; for every five shares beyond the first ten up to one hundred, one additional vote; for every ten shares beyond the first hundred, one additional vote. In case of an unlimited company, that has not a capital divided into shares, each person entitled to vote shall have one vote; f) The chairman's written certificate of the result of the poll, signed by him, shall be conclusive evidence of such result; g) Any person entitled to vote may, by writing signed by him, appoint any other person so entitled as his proxy to vote on his behalf on any poll at such meeting, or at any adjournment thereof. The chairman's decision as to the sufficiency of any appointment of a proxy shall be conclusive. 3. Any such meeting shall be convened: a) By the promoters of the company, or a majority of them, or some person authorised by them by advertisement in two daily newspapers published in Adelaide, or, if there should be only one such newspaper, then in such newspaper: or b) By such person and in such manner as shall be provided in the prospectus of the company, or in any agreement by which the persons who have agreed to take shares shall be bound. 4. Any such meeting may be adjourned to such time and place as the majority of those present and entitled to vote shall by show of hands determine. The chairman's decision as to such determination shall be conclusive evidence thereof. 5. A copy of the memorandum or articles, with a certificate signed by the chairman of the meeting or the last adjournment thereof within three months after such memorandum or articles shall have been fully passed, that such copy is a true copy of the memorandum or articles of the company as duly passed under this section, shall be conclusive evidence of the fact. 6. If a memorandum or articles passed in pursuance of this section shall contain anything which is inconsistent with or a departure from the terms or conditions upon which any person shall have applied for shares in or agreed to become a member of the company, such person may, within one month from the passing of the memorandum or articles, give written notice to the Registrar that he withdraws from the company, which notice shall operate as a rescission of such person's agreement to take shares in or become a member of the company. 7. Nothing in this section shall affect the validity of a memorandum or articles agreed to otherwise than as in this section provided. — Cp. § 9, *supra*, and notes thereto.

Signature to articles. 18. The signature of each subscriber to the articles shall be attested, and the articles shall, when registered, bind the company and all members

thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform thereto, subject to the provisions of this Act. All moneys payable by any member to the company, in pursuance of the articles, shall be deemed to be a specialty debt due from such member to the company. — E. § 14; N. S. W. a. (No. 40 of 1899) 14; V. a. (No. 1074) 16; T. a. (33 Vic. No. 22) 16; Q. e. (27 Vic. No. 4) 15; W. A. a. (56 Vic. No. 8) 19; N. Z. 24.

General provisions.

Registration of memorandum and articles and effect thereof. 19. 1. The memorandum and the articles, if any, shall be delivered to the Registrar, who shall retain and register the same. 2. Upon such registration the Registrar shall certify, under his hand and seal, that the company is incorporated as a limited company, a no-liability company, or an unlimited company, as the case may be. 3. The subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, and with such liability on the part of the members to contribute to the assets of the company, in the event of the same being wound up, as is hereinafter mentioned. — E. §§ 15, 16; N. S. W. a. (No. 40 of 1899) 15, 16, 17; V. a. (No. 1074) 17, 18, f. (No. 1482) 164; T. a. (33 Vic. No. 22) 17, 18; Q. e. (27 Vic. No. 4) 16, 17; W. A. a. (56 Vic. No. 8) 20; N. Z. 26.

Certificate to be gazetted, and Gazette or certificate to be conclusive of incorporation. 20. After signing and sealing such certificate of incorporation, the Registrar shall insert a notice in the *Government Gazette* stating the issue of such certificate, and the terms thereof, and the said certificate, or a copy thereof, certified as correct under the hand and seal of the Registrar for the time being, or the *Gazette* containing such notice, shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with. — See notes to § 19, *supra*, and also T. c. (59 Vic. No. 19) 27; W. A. a. (56 Vic. No. 8) 21.

Inspection of documents. 21. Any person may inspect the documents kept by the Registrar relating to companies, and may require a certificate of the incorporation of any company, or a copy or extract of any other such document, or any part thereof, to be certified by the Registrar. — E. § 243 (6); N. S. W. a. (No. 40 of 1899) 166; V. a. (No. 1074) 19; T. a. (33 Vic. No. 22) 206 (4); Q. e. (27 Vic. No. 4) 172 (5); W. A. a. (56 Vic. No. 8) 22, 204; N. Z. 11.

Copies of memorandum and articles to be given to members. 22. A copy of the memorandum having annexed thereto the articles, if any, shall be supplied to any person at his request, on payment of one shilling, or such less sum as may be prescribed by the company; and if any company make default in supplying a copy of the memorandum and articles, if any, to a member in pursuance of this section, the company shall for each offence incur a penalty not exceeding one pound. — E. § 18; N. S. W. a. (No. 40 of 1899) 233; V. a. (No. 1074) 20; T. a. (33 Vic. No. 22) 19; Q. e. (27 Vic. No. 4) 18; W. A. a. (56 Vic. No. 8) 23; N. Z. 24, 25.

Prohibition against identity of names in companies. 23. No company shall be registered under a name identical with that by which an existing company is already registered, or so nearly resembling the same as in the opinion of the Registrar to be calculated to deceive, except where the existing company is in course of being wound up, and testifies its consent in such manner as the Registrar requires. — E. § 8; N. S. W. a. (No. 40 of 1899) 234; V. a. (No. 1074) 21; T. a. (33 Vic. No. 22) 20; Q. e. (27 Vic. No. 4) 19; W. A. a. (56 Vic. No. 8) 24; N. Z. 27, 28. — For a case where under the circumstances an injunction was issued restraining a company from using a name similar to that of an existing company, see *South Australia Insurance Co., Ltd., v. South Australia Mutual Fire Insurance Co., Ltd.*, 15 S. A. L. R. 108.

Part III. Management and Administration.

Nature of interest in company. 24. The shares or other interest of any member in a company registered under this Act shall be personal estate, capable of being transferred in manner provided by the articles, and shall not be of the nature of real estate; and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number. — E. § 22; N. S. W. a. (No. 40 of 1899) 235; V. a. (No. 1074) 23; T. a. (33 Vic. No. 22) 22; Q. e. (27 Vic. No. 4)

21; W. A. a. (56 Vic. No. 8) 25; N. Z. 30. — A tender of contributing shares, even if fully paid up is not a fulfilment of a contract to sell promoters' shares. — *Cornish et al. v. Edwards*, 22 S. A. L. R. 100.

Manner in which shares are to be issued and held. 25. Every share in a company registered under this Act, excepting a no-liability company, shall be deemed to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless it shall have been otherwise determined by the memorandum or articles or by a contract, duly made in writing, and filed with the Registrar, at or before the issue of such shares. — N. S. W. a. (No. 40 of 1899) 55; T. a. (33 Vic. No. 22) 42; Q. f. (53 Vic. No. 18) 28; W. A. a. (56 Vic. No. 8) 26. — See also N. S. W. b. (No. 47 of 1900).

Definition of "members". 26. The subscribers of the memorandum of any company registered under this Act shall be deemed to have agreed to become members of the company, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company, and whose name is entered on the register of members, shall be deemed to be a member of the company. — E. § 24; N. S. W. a. (No. 40 of 1899) 18; V. a. (No. 1074) 24; T. a. (33 Vic. No. 22) 23; Q. e. (27 Vic. No. 4) 22; W. A. a. (56 Vic. No. 8) 27; N. Z. 21.

Transfer by representative. 27. Any transfer of the share or other interest of a deceased member of a company, made by his representative shall, notwithstanding such representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer. — E. § 29; N. S. W. a. (No. 40 of 1899) 236; V. a. (No. 1074) 25; T. a. (33 Vic. No. 22) 24; Q. e. (27 Vic. No. 4) 23; W. A. a. (56 Vic. No. 8) 28; N. Z. 32.

Register of members. 28. Every company shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars: I. The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member; II. The date at which the name of any person was entered in the register as a member; III. The date at which any person ceased to be a member. Every company not complying with this section shall incur a penalty not exceeding five pounds for every day during which such non-compliance continues; and every director or secretary of such company who knowingly and wilfully authorises or permits such non-compliance shall incur the like penalty. — E. § 25; N. S. W. a. (No. 40 of 1899) 19 (1); V. a. (No. 1074) 26; T. a. (33 Vic. No. 22) 25; Q. e. (27 Vic. No. 4) 24; W. A. a. (56 Vic. No. 8) 29; N. Z. 100.

Yearly list of members. 29. Every company having a capital divided into shares shall make once in every year a list of all persons who, on the thirty-first day of March then next preceding, are members of the company; and such list shall contain the names, and addresses, and occupations, if any, of all the members therein mentioned, the number of shares held by each of them, and a summary specifying the following particulars: I. The amount of the capital of the company, and the number of shares into which it is divided; II. The number of shares taken from the commencement of the company up to the said thirty-first day of March; III. The amount of calls made on each share; IV. The total amount of calls received; V. The total amount of calls unpaid; VI. The total amount of shares forfeited; VII. The names and addresses, and occupations, if any, of the persons who have ceased to be members since the thirty-first day of March next preceding the completion of the last list, and the number of shares held by each of them on the same thirty-first day of March. The above list and summary shall be completed within twenty-one days after the said first-mentioned thirty-first day of March, and a copy shall forthwith be forwarded to the Registrar: Provided that this section shall not apply to a no-liability company. — E. § 26; N. S. W. a. (No. 40 of 1899) 20; V. a. (No. 1074) 27; T. a. (33 Vic. No. 22) 26; Q. e. (27 Vic. No. 4) 25; W. A. a. (56 Vic. No. 8) 30; N. Z. 101 (1, 2).

Penalty on company not keeping a proper register. 30. If any company having a capital divided into shares make default in complying with the provisions of the last preceding section, such company shall incur a penalty not exceeding five pounds for every day during which such default continues; and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits any such default shall incur a like penalty. — E. § 26 (5); N. S. W. a. (No. 40 of 1899)

21; V. a. (No. 1074) 28; T. a. (33 Vic. No. 22) 27; Q. e. (27 Vic. No. 4) 26; W. A. a. (56 Vic. No. 8) 31; N. Z. 101 (3).

No entry of trusts on register. 31. No notice of any trust, expressed, implied, or constructive, shall be entered on the register of members, or be receivable by the Registrar. — E. § 27; N. S. W. a. (No. 40 of 1899) 237; V. a. (No. 1074) 31; T. a. (33 Vic. No. 22) 32; Q. e. (27 Vic. No. 4) 29; W. A. a. (56 Vic. No. 8) 32; N. Z. 103.

Certificate of shares. 32. A certificate under the common seal of the company, specifying any share or stock held by any member thereof, shall be *prima facie* evidence of the title of the member to the share or stock therein specified. — E. § 23; N. S. W. a. (No. 40 of 1899) 238; V. a. (No. 1074) 32; T. a. (33 Vic. No. 22) 33; Q. e. (27 Vic. No. 4) 30; W. A. a. (56 Vic. No. 8) 33; N. Z. 31 (1).

Inspection of register. 33. 1. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed as hereinafter mentioned, shall, during business hours (but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day upon which the registered office of the company shall be open for business be appointed for inspection), be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection; and every such member, or other person, may demand a copy of such register, or of any part thereof, or of any list or summary prepared under section 29, on payment of sixpence for every one hundred words required to be copied. 2. If such inspection or copy be refused, or if the company shall neglect to comply with a lawful demand for such inspection or copy, the company shall incur for each refusal or neglect a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal or neglect continues; and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits such refusal or neglect shall incur the like penalty. In addition to the above penalty a Judge may, by order, compel an immediate inspection of the register, and make such further or other order as the nature of the case requires. — E. § 30; N. S. W. a. (No. 40 of 1899) 239; V. a. (No. 1074) 33; T. a. (33 Vic. No. 22) 34; Q. e. (27 Vic. No. 4) 31; W. A. a. (56 Vic. No. 8) 34; N. Z. 104.

Power to close register. 34. Any company may, upon giving notice by advertisement in any newspaper published in Adelaide, or in the place nearest to the registered office of the company, close the register of members for any time or times not exceeding in the whole seven days in any one month. — E. § 31; N. S. W. a. (No. 40 of 1899) 240; V. a. (No. 1074) 34; T. a. (33 Vic. No. 22) 35; Q. e. (27 Vic. No. 4) 32; W. A. a. (56 Vic. No. 8) 35; N. Z. 105.

Remedy for improper entry, or omission of entry, in register. 35. 1. When the name of any person is without sufficient cause entered in, or omitted from, the register of members of any company, or when default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself may apply to the Court for an order that the register may be rectified, and the Court may either refuse such application, with or without costs to be paid by the applicant, or may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the company, or any other party to the proceedings, to pay all the costs of such application, and the damages any party aggrieved may have sustained. 2. The Court may, in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register, and may direct an issue to be tried in which any question of law may be raised in addition to any question of fact. — E. § 32 (1—3); N. S. W. a. (No. 40 of 1899) 232; V. a. (No. 1074) 36; T. a. (33 Vic. No. 22) 37; Q. e. (27 Vic. No. 4) 34; W. A. a. (56 Vic. No. 8) 36; N. Z. 106, 107. — Where the prospectus of a company provided that the company was to be floated as soon as 500 shares were applied for by the public, and, only 351 being applied for, a vendor to the company put in an application in the name of H for the remaining shares, but paid no cash, it was held that upon the winding-up of the company H's name must be removed from the register,

and that he was not entitled to share in the surplus. — *In re Mount James Consolidated S.-M. Co., Ltd.*, 23 S. A. L. R. 127. — But the right to have a name struck off the register may be lost by laches. — *In re Companies Act of 1864*, 18 S. A. L. R. 13. — For a case where under the circumstances the right to have the register rectified was not lost, even after a lapse of four years, see *In re Parara Mining and Smelting Co., Ltd.* 13 S. A. L. R. 117. See also *Levi v. Wheal James Mining Co.*, 12 S. A. L. R. 26. — Where a contract for the purchase of shares is entered into under the terms of which the transferee is to obtain the consent of the directors of the company to the transfer, the transferor is entitled to be indemnified against all liability in respect of the shares, even though the directors have neglected or refused to register the transfer. — *Bellingham v. Horn*, 21 S. A. L. R. 44. — Where the articles of association of a company provided that every shareholder was entitled to transfer his shares, if it be done in a prescribed form and accompanied by the requisite fee, and a shareholder lodged with the secretary of the company a transfer of certain shares and paid the requisite fee, and new scrip was made out to the transferee, but never signed by the directors, nor the transferor's name removed from the register, and it appeared that the transferor took no further steps to have his name removed from the register, although notices were sent to him by the company as a registered holder of shares, it was held that the transferor was liable for calls made by the liquidator after the liquidation of the company. — *Great Amalgamated Gold Refining Co., Ltd. v. Carstairs*, 11 S. A. L. R. 50. — A person whose name has been placed on the register without his consent or authority is not bound to take steps to have his name removed, nor is he liable as a contributory on the liquidation of the company. — *Great Amalgamated, etc., Co., Ltd. v. Morris*, 11 S. A. L. R. 9. — An entry of a name on the register in an irregular manner may be ratified by subsequent acts of the company. — *Hood v. Ivanhoe South Extended G. M. Co.*, (1899) S. A. L. R. 146. See this case for a discussion of the rights of a holder of a certificate fraudulently issued by an employé of a company. — A company may refuse to register a transfer that is not bona fide. — *In re Companies Act, 1864, etc.*, 11 S. A. L. R. 52. — A transferor of shares is entitled to be indemnified by a transferee against all calls made subsequent to the transfer, and while the transferor's name appears on the register, notwithstanding that the transfer was in blank and the transferee has parted with the shares. — *Alexander v. Caro*, 22 S. A. L. R. 134. — Where the claim of an alleged proprietor to be placed on the register of shares is resisted on the ground of absolute failure of consideration, the Supreme Court will not exercise its summary jurisdiction on disputed facts, but will direct an issue to ascertain the facts, or leave the claimant to his remedy by a bill in equity. — *In re Murninnie Bismuth & Copper Mining & Patent Smelting Co.*, *Pelham* (S. A.) 87.

Notice to Registrar of rectification of register. 36. When an order has been made rectifying the register in the case of a company hereby required to send in a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar. — E. § 32 (4); N. S. W. a. (No. 40 of 1899) 232 (4); V. a. (No. 1074) 37; T. a. (33 Vic. No. 22) 38; Q. e. (27 Vic. No. 4) 35; W. A. a. (56 Vic. No. 8) 37; N. Z. 108.

Register to be evidence. 37. The register of members shall be *prima facie* evidence of all matters by this Act directed or authorised to be inserted therein. — E. § 33; N. S. W. a. (No. 40 of 1899) 226; V. a. (No. 1074) 38; T. a. (33 Vic. No. 22) 39; Q. e. (27 Vic. No. 4) 36; W. A. a. (56 Vic. No. 8) 38; N. Z. 109.

Registered office of company. Notice of situation of registered office. 38. 1. Every company shall have a registered office, to which all communications and notices may be addressed, and which office shall, while the business of the company is being carried on, be accessible to the public for not less than four hours on at least two days in each week. 2. Notice of the situation of such registered office, and the day and hours during which it is accessible to the public, and of any change therein, shall be inserted in the *Government Gazette* and in one daily newspaper published in Adelaide, and shall be given to the Registrar, and recorded by him. Until such notice is given the company shall not be deemed to have complied with the provisions of this Act, with respect to having a registered office. 3. If any company carries on business without having such an office so accessible, or without having given such notice as aforesaid, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on. — E. § 62; N. S. W. a. (No. 40 of 1899) 227, 231; V. a. (No. 1074) 40; T. a. (33 Vic. No. 22) 43, 44; Q. e. (27 Vic. No. 4) 38, 39; W. A. a. (56 Vic. No. 8) 39; N. Z. 124, 125.

Directors to appoint secretary. Secretary to be present at office while open to the public. 39. The directors of every company registered under this Act shall appoint a secretary, who shall, while the business of the company is being carried on, be present at the registered office of his company by himself, or his agent or clerk, on every day, at the hours on and at which the registered office is to be accessible to the public. Any such secretary who shall omit to comply with this section shall be liable to a penalty not exceeding one pound for every day on which such omission occurs.

Publication of name by company. Penalties on non-publication of name. 40.

1. Every company shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company. 2. If any company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding five pounds, for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed, and every director or manager of the company who knowingly and wilfully authorises or permits such default, shall be liable to the like penalty. 3. If any director, manager, secretary, or other officer of such company, or any person on its behalf, uses or authorises the use of any seal purporting to be seal of the company, whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of such company, or signs or authorises to be signed on behalf of the company any bill of exchange, promissory note or indorsement, cheque, or order for money or goods, or issues, or authorises to be issued, any bill of parcels, invoice, receipt, or letter of credit of the company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty not exceeding fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods for the amount thereof, unless the same is duly paid by the company. — E. § 63; N. S. W. a. (No. 40 of 1899) 67, 68; V. a. (No. 1074) 41, 42; T. a. (33 Vic. No. 22) 45, 46; Q. e. (27 Vic. No. 4) 40, 41; W. A. a. (56 Vic. No. 8) 41; N. Z. 126—128.

Register of mortgages. 41. 1. Every company shall keep a register of all mortgages, bills of sale, and other charges specifically affecting property of the company, and shall enter in such register, in respect of each mortgage, bill of sale, or charge, a short description of the property mortgaged or charged, the amount of charge created, and the rate of interest payable, and the names of the mortgagees or persons entitled to such charge. 2. If any property of a company shall be mortgaged or charged, or if any bill of sale shall be given without such entry as aforesaid being made, every director, manager, secretary, or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds. 3. The register of mortgages, bills of sale, and charges required by this section shall be open to inspection by any member or creditor of the company, at all reasonable times; and if such inspection be refused, any officer of the company refusing the same, and every director, manager, or secretary of the company authorising or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and in addition to the above penalty, a Judge may, by order, compel an immediate inspection of the register. — E. §§ 100, 101; N. S. W. a. (No. 40 of 1899) 243; V. a. (No. 1074) 43; T. a. (33 Vic. No. 22) 47; Q. e. (27 Vic. No. 4) 42; W. A. a. (56 Vic. No. 8) 43; N. Z. 129.

Certain companies to publish statements. 42. The manager, or other authorised officer, of every insurance company, and deposit, provident, or benefit society under *The Companies Act, 1864*, shall, on the first Monday in February and the first Monday in August in every year during which it carries on business, make before some justice a declaration in the form contained in the fifth Schedule hereto, or as near thereto as circumstances will admit; and a copy of such declaration shall be put in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the Company is carried on, and shall be given to any member or creditor of the company who applies for the same, upon payment of a sum not exceeding sixpence. If default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding five pounds for every day while such default continues, and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty. — E. § 108; N. S. W. a. (No. 40 of 1899)

69; V. a. (No. 1074) 44; T. a. (33 Vic. No. 22) 48; Q. e. (27 Vic. No. 4) 43; W. A. a. (56 Vic. No. 8) 43; N. Z. 110.

List of directors, etc., to be sent to Registrar of Companies. Penalty on company not keeping register of directors, etc. 43. 1. Every company not having a capital divided into shares, shall keep, at its registered office, a register containing the names and addresses and the occupations of its directors and managers, and shall send to the Registrar a copy of such register, and shall from time to time notify to him any change that takes place in such directors or managers. 2. If any company not having a capital divided into shares, make default in keeping a register of its directors and managers, or in sending a copy of such register to the Registrar, in compliance with this section, or in notifying to the Registrar any change that takes place in such directors or managers, such company shall incur a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of such company, who knowingly and wilfully authorises or permits such default, shall incur the like penalty. — E. § 75; N. S. W. a. (No. 40 of 1899) 70, 71; V. a. (No. 1074) 45, 46, f. (No. 1482) 166; T. a. (33 Vic. No. 22) 49, 50; Q. e. (27 Vic. No. 4) 44, 45; W. A. a. (56 Vic. No. 8) 45; N. Z. 102.

Contracts, how made. 44. Contracts on behalf of any company may be made, varied, or discharged as follows: I. Any contract which, if made between private persons, would be by law required to be in writing under seal, may be made, varied, or discharged, in the name and on behalf of the company, in writing, under the common seal of the company; II. Any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, may be made, varied, or discharged, in the name and on behalf of the company, in writing, signed by any person acting under the express or implied authority of the company; III. Any contract which, if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, may be made, varied, or discharged by parol, in the name and on behalf of the company, by any person acting under the express or implied authority of the company. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be. — E. § 76; N. S. W. a. (No. 40 of 1899) 241; V. a. (No. 1074) 47; T. a. (33 Vic. No. 22) 60; Q. e. (27 Vic. No. 4) 47; W. A. a. (56 Vic. No. 8) 46; N. Z. 146, 147.

Promissory notes and bills of exchange. 45. A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company, if made, accepted, or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or indorsed by, or on behalf, or on account of the company, by any person acting under the authority of the company. — E. § 77; N. S. W. a. (No. 40 of 1899) 244; V. a. (No. 1074) 48; T. a. (33 Vic. No. 22) 51; Q. e. (27 Vic. No. 4) 46; W. A. a. (56 Vic. No. 8) 47; N. Z. 148. — *Cp. Lindsay v. Walker & Lord*, 4 S. A. L. R. 106.

Prohibition against carrying on business with less than five members. 46. If any company carries on business when the number of its members is less than five, for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than five members, shall be severally liable for the payment of the whole debts of the company contracted during such time. — E. § 115; N. S. W. a. (No. 40 of 1899) 245; V. a. (No. 1074) 49; T. a. (33 Vic. No. 22) 52; Q. e. (27 Vic. No. 4) 47; W. A. a. (56 Vic. No. 8) 48; N. Z. 132.

Company to hold meeting within six months after registration. General meeting of company. 47. 1. Every company registered under this Act shall hold a general meeting within six months after the memorandum is registered; and if such meeting be not held, the company shall be liable to a penalty not exceeding five pounds for every day after the expiration of such six months until the meeting is held; and every director, manager, or secretary of the company who knowingly authorises or permits such default, shall be liable to the same penalty. 2. A general meeting of every company shall be held once at least in every six months. — E. §§ 64, 64; N. S. W. a. (No. 40 of 1899) 242, 246; V. f. (No. 1482) 55, V. a. (No. 1074) 50; T. a. (33 Vic. No. 22) 53, 54; Q. e. (27 Vic. No. 4) 48, f. (53 Vic. No. 18) 34; W. A. a. (56 Vic. No. 8) 49; N. Z. 87 (1, 9), 88.

Power to alter regulations by special resolution. 48. 1. Subject to the provisions of this Act and to the conditions contained in the memorandum, any company may, in general meeting from time to time, by special resolution alter or repeal all or any of the articles of the company, whether registered articles or articles contained in Table A in the first Schedule to *The Companies Act, 1864*, or in Table A in the second Schedule to this Act (where either of such tables is applicable to the company), or make new articles to the exclusion of or in addition to all or any of the articles of the company. 2. Any articles made under this section shall be deemed to be articles of the company of the same validity as if they had been the original articles, and shall be subject in like manner to be altered or repealed by any subsequent special resolution. 3. At any meeting convened for passing a special resolution for any purpose whatever, unless a poll be demanded by at least two members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favor of or against the same. 4. If a poll with regard to a special resolution be demanded by two or more members the same shall be taken on a day to be fixed by the chairman, and to be not less than seven nor more than fourteen days after the day of the meeting. In computing the majority on taking such poll where a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the articles, and, unless a sufficient majority be obtained at such poll, the special resolution shall not be deemed to have been passed. 5. Notice of any such meeting shall be deemed to be duly given, and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the articles. — E. §§ 13, 69; N. S. W. a. (No. 40 of 1899) 72; V. a. (No. 1074) 51; T. a. (33 Vic. No. 22) 55; Q. e. (27 Vic. No. 4) 50; W. A. a. (56 Vic. No. 8) 50; N. Z. 122. — The resolution for amending the articles must not be indefinite or vague. For a case where under the circumstances an injunction was granted for restraining the company and its directors from carrying out a resolution that was insufficient, see *Harvey v. Adelaide & Hindmarsh Tramway Co., Ltd.*, 15 S. A. L. R. 136. — *Quære*, whether a shareholder attending a meeting is not estopped from setting up the insufficiency of the notice of the objects for which the meeting was convened. — *Ibid.* — The minute book is *prima facie* evidence not only that any notice mentioned therein has been duly sent but that such notice contained the requisite information. The notice need not state the resolutions to be proposed in their very words but will be sufficient if it substantially sets forth the nature of the business to be transacted and the resolutions to be proposed. — *Inglewood Mining Venture, Ltd. v. Price*, 6 S. A. L. R. 2.

Provisions where no articles as to meeting. 49. In default of any article as to voting, every member shall have one vote at any general meeting of a company; in default of any article as to summoning general meetings, a meeting shall be deemed to be duly summoned of which seven days' notice in writing has been served on every member, in manner in which notices are required to be served by Table A in the second Schedule hereto; in default of any articles as to the persons to summon meetings, five members may summon the same; and in default of any article as to who is to be chairman of a meeting, any person elected by the members present may preside. — E. § 67; N. S. W. a. (No. 40 of 1899) 248; V. a. (No. 1074) 53; T. a. (33 Vic. No. 22) 57; Q. e. (27 Vic. No. 4) 52; W. A. a. (56 Vic. No. 8) 51; N. Z. 90.

Special resolution to prevail over memorandum or articles. 50. Anything by this Act authorised to be done by special resolution may be so done, notwithstanding anything to the contrary contained in the memorandum or articles of any company now registered or hereafter to be registered. — See notes to § 48, *supra*.

Registration of special resolutions. 51. When a special resolution is passed by a company, a copy thereof shall be printed and forwarded to the Registrar, and be recorded by him. If such copy be not so forwarded within fifteen days from the date of the passing of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits such default shall be liable to a like penalty. — E. § 70; N. S. W. a. (No. 40 of 1899) 249; V. a. (No. 1074) 54; T. a. (33 Vic. No. 22) 58; Q. e. (27 Vic. No. 4) 53; W. A. a. (56 Vic. No. 8) 53; N. Z. 93.

Copies of special resolutions. 52. Where articles have been registered, a copy of every special resolution for the time being in force, shall be annexed to or embodied in every copy of the articles that may be issued after the passing of such resolution. Where no articles have been registered a copy of any special resolution shall be

forwarded to any member requesting the same, on payment of one shilling, or such less sum as the company may direct. If any company make default in complying with this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director, manager, and secretary of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty. — E. § 70; N. S. W. a. (No. 40 of 1899) 250; V. a. (No. 1074) 55; T. a. (33 Vic. No. 22) 59; Q. e. (27 Vic. No. 4) 54; W. A. a. (56 Vic. No. 8) 54; N. Z. 94.

Execution of deeds abroad. 53. Any company may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the said Province; and every deed under the seal of such attorney, and signed by him on behalf of the company, shall be binding on the company, and have the same effect as if it were under the common seal of the company. — E. § 78; N. S. W. a. (No. 40 of 1899) 251; V. a. (No. 1074) 56; T. a. (33 Vic. No. 22) 61; Q. e. (27 Vic. No. 4) 55; W. A. a. (56 Vic. No. 8) 55; N. Z. 150.

Examination of affairs of company by inspectors. 54. The Governor may appoint one or more competent inspectors to examine into the affairs of any company, and to report thereon in such manner as the Governor may direct, upon the application following, that is to say: I. In the case of any company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued; II. In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members. — E. § 109 (1); N. S. W. a. (No. 40 of 1899) 252; V. a. (No. 1074) 57; T. a. (33 Vic. No. 22) 62; Q. e. (27 Vic. No. 4) 56; W. A. a. (56 Vic. No. 8) 56; N. Z. 140.

Application for inspection to be supported by evidence. 55. The Governor, before appointing any inspector, may require the applicants to satisfy him that they have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same, and to give security for payment of the costs of the inquiry. — E. § 109 (2); N. S. W. a. (No. 40 of 1899) 253; V. a. (No. 1074) 58; T. a. (33 Vic. No. 22) 63; Q. e. (27 Vic. No. 4) 57; W. A. a. (56 Vic. No. 8) 57; N. Z. 141, 142.

Inspection of books. 56. It shall be the duty of all officers and agents of the company to produce all books and documents in their custody or power for the examination of the inspectors. Every inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence. — E. § 109 (3—5); N. S. W. a. (No. 40 of 1899) 254; V. a. (No. 1074) 59; T. a. (33 Vic. No. 22) 64; Q. e. (27 Vic. No. 4) 58; W. A. a. (56 Vic. No. 8) 58; N. Z. 143 (1—3).

Result of examination, how dealt with. 57. Upon the conclusion of the examination, the inspector shall report to the Governor their opinion, and a copy of such report shall be sent to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or any one or more of them. All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Governor shall direct the same to be paid out of the assets of the company, which he is hereby authorised to do. — E. § 109 (6, 7); N. S. W. a. (No. 40 of 1899) 255; V. a. (No. 1074) 60; T. a. (33 Vic. No. 22) 65; Q. e. (27 Vic. No. 4) 59; W. A. a. (56 Vic. No. 8) 59; N. Z. 143 (4—7).

Power of company to appoint inspectors. 58. Any company may, by special resolution, appoint inspectors for the purpose of examining into the affairs of the company. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Governor, with this exception, that instead of making their report to the Governor they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors

had been appointed by the Governor. — E. § 110; N. S. W. a. (No. 40 of 1899) 256; V. a. (No. 1074) 61; T. a. (33 Vic. No. 22) 66; Q. e. (27 Vic. No. 4) 60; W. A. a. (56 Vic. No. 8) 60; N. Z. 144.

Report of inspectors to be evidence. 59. A copy of the report of any inspectors appointed under this Act, purporting to be authenticated by the signatures of such inspectors or by the seal of the company, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors, in relation to any matter contained in such report. — E. § 111; N. S. W. a. (No. 40 of 1899) 257; V. a. (No. 1074) 62; T. a. (33 Vic. No. 22) 67; Q. e. (27 Vic. No. 4) 61; W. A. a. (56 Vic. No. 8) 61; N. Z. 145.

Evidence of proceedings at meetings. 60. Every company shall cause minutes of all resolutions and proceedings of meetings of the company, and of the directors or managers of the company in cases where there are director or managers, to be duly entered in books. Any such minute as aforesaid, if signed by any person purporting to be the chairman of the meeting at which such resolution were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and, until the contrary is proved, every meeting of the company, or of directors, or managers, in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat and proceedings had to have been duly passed and had, and all appointments of directors, managers secretaries, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, secretaries, and liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications. — E. §§ 71, 74, 149 (10); N. S. W. a. (No. 40 of 1899) 260; V. a. (No. 1074) 67; T. a. (33 Vic. No. 22) 73; Q. e. (27 Vic. No. 4) 67; W. A. a. (56 Vic. No. 8) 62; N. Z. 154.

Pleadings in action against members. 61. In any action brought by a company against any member to recover any call or other money due from such member in his character of member it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made, or other money due. — N. S. W. a. (No. 40 of 1899) 73; V. a. (No. 1074) 69; T. a. (33 Vic. No. 22) 75; Q. e. (27 Vic. No. 4) 69; W. A. a. (56 Vic. No. 8) 63; N. Z. 156.

Provision as to security for costs in actions brought by certain companies. 62. Where a limited or no-liability company, whether incorporated under this Act, *The Companies Act, 1864*, or *The Mining Companies Act, 1881*, is plaintiff or complainant in any action or other legal proceeding other than such as is in the last preceding section mentioned, any Judge or Special Magistrate having jurisdiction in the matter may, if he have reason to believe that if the defendant be successful in his defence the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given. — E. § 278; N. S. W. a. (No. 40 of 1899) 259; V. a. (No. 1074) 68; T. a. (33 Vic. No. 22) 74; Q. e. (27 Vic. No. 4) 68; W. A. a. (56 Vic. No. 8) 64; N. Z. 155.

Governor in Council may alter forms in Schedule. 63. The forms set forth in the sixth Schedule hereto, or forms to the like effect or as near thereto as circumstances admit, shall be used in all matters to which such forms refer. The Governor may from time to time make alterations in and additions to the tables and forms contained in the second, fifth, and sixth Schedules hereto, and make alterations in the tables in the third and fourth Schedules, but so that the amount of fees payable to the Registrar under the last mentioned Schedules be not increased. Any such table or form when altered shall be published in the *Government Gazette*, and shall thereupon have the same force as if it were included in the Schedules to this Act; but no alteration made by the Governor in the table marked A contained in the second Schedule shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such table. — E. § 118; N. S. W. a. (No. 40 of 1899) 74; V. a. (No. 1074) 70; T. a. (33 Vic. No. 22) 76; Q. e. (27 Vic. No. 4) 70; W. A. a. (56 Vic. No. 8) 65; N. Z. 324, 325.

Power for companies to refer matter to arbitration. 64. Any company may from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any existing or future difference, question, or other matter whatsoever in dispute between itself and any other company or person, and the parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms, order any thing to be done, or determine any matter

capable of being lawfully determined by the parties to the reference themselves or the directors or other managing body of any company party to the reference. — E. § 119; N. S. W. a. (No. 40 of 1899) 75, 76; T. a. (33 Vic. No. 22) 77—105; Q. e. (27 Vic. No. 4) 71, 72; W. A. a. (56 Vic. No. 8) 66; N. Z. 159.

Power of companies to change name. 65. 1. Any company may, with the sanction of a special resolution of the company, and with the approval of the Registrar (certified by him in writing under his hand and to be registered by him), change its name, and, upon such change being made, the Registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of the alteration of name. 2. No such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name. 3. Any alteration so made shall be advertised by the Registrar once in the *Government Gazette*, and in one newspaper published in the said Province nearest to the registered office of the company. 4. A certificate or an advertisement in the *Government Gazette* under this section shall be conclusive evidence of the alteration to which it relates. — E. § 8; N. S. W. a. (No. 40 of 1899) 225; V. a. (No. 1074) 22; T. a. (33 Vic. No. 22) 13; Q. e. (27 Vic. No. 4) 12; W. A. a. (56 Vic. No. 8) 67; N. Z. 160.

Power to alter memorandum with regard to objects. 66. 1. Subject to the provisions hereinafter contained, any company may, by special resolution, alter the provisions of its memorandum of association or deed of settlement with respect to the objects of the company so far as may be required for all or any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any alteration as aforesaid with respect to the objects of the company. 2. The purposes for which the alteration of the memorandum of association or deed of settlement may be made with respect to the objects of a company are: a) To carry on the company's business more economically or more efficiently; b) To attain its main purpose by new or improved means; c) To enlarge or change the local area of its operations; d) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; e) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement. 3. No alteration under this section shall take effect until confirmed by the Court on petition. 4. Before confirming any such alteration, the Court must be satisfied: a) That the alteration is desired for all, or some, or one of the purposes in this section above mentioned; — b) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and c) That with respect to every creditor who, in the opinion of the Court, is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged, or has determined, or has been secured to the satisfaction of the Court. 5. The Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section. 6. An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit; and the Court may confirm any such alteration either wholly or in part, and may make such orders as to costs as it deems proper. 7. The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company, or of any class of such members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interest of dissentient members, and the Court may give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided that it shall not be lawful to expend any part of the capital of the company in any such purchase. — E. § 9 (1—5); N. S. W. c. (No. 22 of 1906) 3—5; V. f. (No. 1482) 77—81; T. c. (59 Vic. No. 19) 5; Q. g. (55 Vic. No. 10) 4; W. A. a. (56 Vic. No. 8) 68; N. Z. 162.

Registration of order confirming alteration. 67. 1. Where a company has altered the provisions of its memorandum of association or deed of settlement with respect

to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, or together with a copy of the substituted memorandum and articles of association, as the case may be, shall be delivered by the company to the Registrar within fifteen days from the date of the order. The Registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requirements of this Act, with respect to such alteration and the confirmation thereof, have been complied with, and that the alteration and confirmation are valid, and thenceforth the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company as if it were a company registered under Part II. of this Act, with such memorandum and articles, and the company's deed of settlement shall cease to apply to the company. 2. If a company make default in delivering to the Registrar any document required by this section to be delivered to him, the company shall be liable to a penalty not exceeding ten pounds for every day during which it is in default. — E. § 9 (6, 7); N. S. W. c. (No. 22 of 1906) 6; V. f. (No. 1482) 82—86; T. c. (59 Vic. No. 19) 6; Q. g. (55 Vic. No. 10) 5; W. A. a. (56 Vic. No. 8) 69; N. Z. 163.

Modification of memorandum with regard to capital. 68. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum as to effect all or any of the following purposes: I. The increase of its capital by the issue of new shares of such amount as may be thought expedient; II. The consolidation and division of its capital into shares of larger amount than its existing shares; III. The division (by sub-division of its existing shares, or any of them) of its capital, or any part thereof, into shares of smaller amount than fixed by its memorandum: Provided that in such sub-division the proportion between the amount which is paid or deemed paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the share or shares from which the share of reduced amount is derived; IV. The conversion of its paid up shares into stock; V. The reduction of its capital, whether paid up or not, including the cancellation of any lost capital, or any capital not represented by available assets, or the payment off of any capital which may be in excess of the wants of the company; and as to paid up capital, the reduction thereof, either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company. To the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved; VI. The reduction of its capital by the cancellation of any shares which at the date of the passing of the special resolution authorising such cancellation have not been taken or agreed to be taken by any person; VII. Making the liability of the directors, or managers, or of the managing director unlimited. — E. § 41, 61; N. S. W. a. (No. 40 of 1899) 11, 38—40, 51; V. a. (No. 1074) 8, 13, f. (No. 1482) 88 (1); T. a. (33 Vic. No. 22) 12, 30, d. (60 Vic. No. 3) 3, e. (6 Edw. 7, No. 25) 2, 4; Q. e. (27 Vic. No. 4) 11, f. (53 Vic. No. 18) 4, 18; W. A. a. (56 Vic. No. 8) 70; N. Z. 38, 42, 44, 53, 56, 84. — Subsections I.—IV. apply to no-liability companies registered under this Act, as well as to a company limited by shares. — b. (No. 576) § 4, *infra*. See Van Creek G. M. Co. v. Wadham, 8 S. A. L. R. 141.

Company to add “and reduced” to its name for a limited period. 69. Subject to sub-section 4 of the next following section every company which has passed a special resolution for reducing its capital shall, from the date of such resolution, add to its name, until such date as the Court shall fix, the words “and reduced” as the last words in its name, and such words shall, until such last-mentioned date, be deemed part of the name of the company. — E. § 48; N. S. W. a. (No. 40 of 1899) 41; V. f. (No. 1482) 88; T. d. (60 Vic. No. 3) 4; Q. f. (53 Vic. No. 18) 5; W. A. a. (56 Vic. No. 8) 71; N. Z. 44 (2).

Confirmation of resolutions in certain cases. 70. 1. No resolution for sub-division of shares under sub-section III. of section 68, or for reduction of capital, either with or without cancellation or payment off of capital, under sub-section V. of section 68, shall come into operation until an order confirming such sub-division or reduction shall have been made by the Court and registered by the Registrar. 2. Such order shall be applied for by the company on petition, and the Court may, in any case,

require the company to publish, in such manner as the Court shall think fit, the reason for the sub-division of its shares or reduction of its capital, or such other information in respect to such sub-division or reduction as the Court may think expedient, with a view to giving proper information to the public in relation to such sub-division or reduction, and, if the Court thinks fit, the causes which led to the same. 3. On the hearing of the petition every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall, subject to sub-section 4 of this section, be entitled to object to the proposed sub-division or reduction and to be entered on the list mentioned in sub-section 5 of this section. 4. Where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital, or the payment to any member of any paid up capital, the creditors of the company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction, nor shall it in such a case be necessary, before the presentation of the petition for confirming the reduction, to add the words "and reduced", as provided by section 69 of this Act, and the Court may dispense altogether with the addition of such words. 5. The Court shall settle a list of the creditors entitled to object under sub-section 3 of this section, and for that purpose shall ascertain, as far as possible, without requiring an application from any creditor, the names of such creditors, and the nature and the amount of their debts or claims; and may publish notices, fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed sub-division or reduction. 6. On the hearing of the petition, the Court may, if satisfied that, in the case of every creditor who under this section is entitled to object to the sub-division or reduction, such creditor has so consented, or that his debt or claim has been discharged or has determined, or that it has been secured under sub-section 7 of this section, make an order confirming the sub-division or reduction, on such terms and subject to such conditions as the Court shall think fit. 7. Where a creditor, whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed sub-division or reduction, the Court may dispense with such consent on the company securing the payment of the debt or claim of such creditor, by setting apart and appropriating in such manner as the Court may direct a sum of such amount as is hereinafter mentioned, that is to say: I. If the full amount of the debt or claim of the creditor is admitted by the company, or though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated; II. If the full amount of the debt or claim of the creditor is not admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent, or not ascertained, then the Court may inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up under order of the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated. — E. §§ 47—50; N. S. W. a. (No. 40 of 1899) 39, 41—45; V. f. (No. 1482) 88—91; T. d. (60 Vic. No. 3) 3—9; Q. f. (53 Vic. No. 18) 4—10; W. A. a. (56 Vic. No. 8) 71; N. Z. 38, 44—46, 53—55.

Order and minute to be registered. 71. The Registrar, upon the production to him of an order of the Court confirming the sub-division of the shares or the reduction of the capital of a company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing, with respect to the capital of the company as altered by the order, the amount of such capital, the number of shares in which it is to be divided, the amount of each share, and the amount, if any, at the date of the registration of the minute proposed to be deemed to have been paid up on each share, shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect. Notice of such registration shall be published in such manner as the Court may direct. The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the sub-division of shares or the reduction of capital have been complied with, and that the capital of the com-

pany is such as is stated in the minute. — E. § 51; N. S. W. a. (No. 40 of 1899) 46; V. f. (No. 1482) 92, 100; T. d. (60 Vic. No. 3) 11; Q. f. (53 Vic. No. 18) 11; W. A. a. (56 Vic. No. 8) 73; N. Z. 38, 47.

Minute to form part of memorandum. 72. 1. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of the company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum; and, subject as is in this Act mentioned, no member of the company, whether past or present, shall be liable, in respect of any share, to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute. 2. A copy of such registered minute shall be embodied in every copy of the memorandum issued after the registration of the minute, and if any company shall make default in complying with the provisions of this sub-section, it shall incur a penalty not exceeding one pound for each copy of the memorandum in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty. — E. § 52; N. S. W. a. (No. 40 of 1899) 47, 49; V. f. (No. 1482) 93, 95; T. d. (63 Vic. No. 3) 12, 14; Q. f. (53 Vic. No. 18) 12, 14; W. A. a. (56 Vic. No. 8) 74; N. Z. 39, 47, 49.

Saving of rights of creditors who are ignorant of proceedings. 73. 1. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the 106th section of this Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration. 2. On the company being wound up, either under order of the Court or voluntarily, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may settle a list of such contributories accordingly, and the liquidator may make and recover calls and the Court may make and enforce orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves. — E. § 53; N. S. W. a. (No. 40 of 1899) 48; V. f. (No. 1482) 94; T. d. (60 Vic. No. 3) 13; Q. f. (53 Vic. No. 18) 13; W. A. a. (56 Vic. No. 8) 75; N. Z. 48.

Penalty on concealment of name of creditor. 74. If any director, manager, secretary, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed sub-division, or reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or aids or abets in, or is privy to, any such concealment or misrepresentation as aforesaid, every such director, manager, secretary, or officer shall be guilty of a misdemeanour. — E. § 54; N. S. W. a. (No. 40 of 1899) 50; V. f. (No. 1482) 96; T. d. (60 Vic. No. 3) 15; Q. f. (53 Vic. No. 18) 15; W. A. a. (56 Vic. No. 8) 76; N. Z. 50.

Notice of increase of capital and of members to be given to Registrar. 75. Notice of any increase beyond the registered capital in the capital of a company having a capital divided into shares, whether such shares have or have not been converted into stock, or of any increase beyond the registered number in the number of members of a company not having a capital divided into shares, shall be given to the Registrar; in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised; and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on, or has taken place. The Registrar shall forthwith record the amount of such increase of capital or members, and a copy of such notice shall be inserted in the *Government Gazette*. If such notice be not given within the period aforesaid, the company shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues; and every director

and manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty. — E. § 44; N. S. W. a. (No. 40 of 1899) 24; V. a. (No. 1074) 35; T. a. (33 Vic. No. 22) 36; Q. e. (27 Vic. No. 4) 33; W. A. a. (56 Vic. No. 8) 77; N. Z. 43. — This section applies to a no-liability company registered under this Act as well as to a company limited by shares. — b. (No. 576) § 4, *infra*.

Company to give notice of consolidation or conversion of capital into stock. 76. Every company having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall give notice to the Registrar of such consolidation and division, or of such conversion, specifying the shares so consolidated and divided, or so converted. If such notice be not given within fifteen days from the completion of such consolidation and division, or such conversion, as the case may be, the company shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues; and every director and manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty. — E. § 42; N. S. W. a. (No. 40 of 1899) 24; V. a. (No. 1074) 29; T. a. (33 Vic. No. 22) 28; Q. e. (27 Vic. No. 4) 27; W. A. a. (56 Vic. No. 8) 78; N. Z. 40. — This section applies to a no-liability company registered under this Act as well as to a company limited by shares. — b. (No. 576) § 4, *infra*.

Effect of conversion of shares into stock. 77. Where any company, having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the Registrar, all the provisions of this Act, which are applicable to shares only, shall cease as to so much of the capital as is converted into stock, and the register of members required to be kept by the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member in the list, instead of the amount of shares, and the particulars relating to shares, hereinbefore required. — E. § 43; N. S. W. a. (No. 40 of 1899) 23; V. a. (No. 1074) 30; T. a. (33 Vic. No. 22) 29; Q. e. (27 Vic. No. 4) 28; W. A. a. (56 Vic. No. 8) 79; N. Z. 41. — This section applies to a no-liability company registered under this Act as well as to a company limited by shares — b. (No. 576), § 4, *infra*.

Limited company may prevent further capital being called up, except on winding-up. 78. 1. A limited company may, by special resolution, declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in such event and for such purpose. Such resolution shall be advertised in the *Government Gazette*, and the Registrar shall note the same on the memorandum; and every copy of the memorandum subsequently issued by the company shall contain a note of such special resolution. 2. Any company not complying with this section shall incur a penalty not exceeding one pound for each copy of the memorandum in respect of which default is made; and every director and manager of the company who knowingly and wilfully authorises or permits such default shall incur the like penalty. — E. § 59; W. A. a. (56 Vic. No. 8) 80; N. Z. 37.

Company may have some shares fully paid and others not. 79. Any company, including a no-liability company, may, by special resolution, authorise any one or more of the following things, namely: I. The making of arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and in the time of payment of such calls; II. The acceptance from any member of the company who assents thereto of the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made; III. The payment of dividends in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others. — E. § 39; N. S. W. a. (No. 40 of 1899) 54; T. a. (33 Vic. No. 22) 41; Q. f. (53 Vic. No. 18) 27; W. A. a. (56 Vic. No. 8) 81; N. Z. 36.

Part IV. Companies authorised to register under this Act.

Regulations as to registration of existing companies. 80. The following regulations shall be observed with respect to the registration of companies under this Part of this Act (that is to say): I. No company having the liability of its members limited by Act of Parliament or Letters Patent, and not being a joint stock company

as hereinafter defined, shall register under this Act in pursuance of this Part thereof; II. No company having the liability of its members limited by Act of Parliament or by Letters Patent shall register under this Act, in pursuance of this Part thereof, as an unlimited company; III. No company that is not a joint stock company, as hereinafter defined, shall, in pursuance of this Part of this Act, register under this Act as a limited company; IV. No company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally, or by proxy in cases where proxies are allowed by the articles of the company, at some general meeting summoned for the purpose; V. Where a company, not having the liability of its members limited by Act of Parliament or Letters Patent, is about to register as a limited company, the majority required to assent, as aforesaid, shall consist of not less than three-fourths of the members present personally or by proxy at such last-mentioned general meeting. In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the articles of the company of which he is a member. — E. § 249; N. S. W. a. (No. 40 of 1899) 167; V. a. (No. 1074) 159; T. a. (33 Vic. No. 22) 210; Q. e. (27 Vic. No. 4) 173; W. A. a. (56 Vic. No. 8) 82; N. Z. 272.

Permissive registration of companies. 81. With the above exceptions, and subject to the foregoing regulations, every company existing at the time of the coming into operation of *The Companies Act, 1864*, and consisting of five or more members, and any company thereafter formed in pursuance of any Act of Parliament other than the last mentioned Act, or *The Mining Companies Act, 1881*, or this Act, or of Letters Patent, or otherwise duly constituted by law, and consisting of five or more members, may, at any time hereafter, register itself under this Act as an unlimited company, or a limited company, and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up. — E. § 249; N. S. W. a. (No. 40 of 1899) 168; V. a. (No. 1074) 160; T. a. (33 Vic. No. 22) 211; Q. e. (27 Vic. No. 4) 174; W. A. a. (56 Vic. No. 8) 83; N. Z. 273, 291—296.

Definition of joint stock companies. 82. For the purpose of this Part of this Act, so far as the same relates to the description of companies empowered to register themselves as limited companies, a joint stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount divided into shares, also of fixed amount or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such company, when registered with limited liability under this Act, shall be deemed to be a limited company. — E. § 250; N. S. W. a. (No. 40 of 1899) 169; V. a. (No. 1074) 161; T. a. (33 Vic. No. 22) 212; Q. e. (27 Vic. No. 4) 175; W. A. a. (56 Vic. No. 8) 84; N. Z. 274.

Requisitions for registration by companies. 83. Previously to the registration in pursuance of this Part of this Act of any joint stock company, there shall be delivered to the Registrar the following documents: I. A list showing the names, addresses, and occupations of all persons who, on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively; II. A copy of any Act of Parliament, Royal Charter, Letters Patent, deed of settlement, contract of co-partnership, or other instrument constituting or regulating the company; III. If any such joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars: a) The nominal capital of the company and the number of shares into which it is divided; b) The number of shares taken and the amount paid on each share; c) The name of the company, with the addition of the word "limited", as the last word thereof. — E. § 252; N. S. W. a. (No. 40 of 1899) 171; V. a. (No. 1074) 163; T. a. (33 Vic. No. 22) 214; Q. e. (27 Vic. No. 4) 177; W. A. a. (56 Vic. No. 8) 85; N. . 275.Z

Requisitions for registration by existing company, not being a joint stock company. 84. Previously to the registration in pursuance of this Part of this Act of any company not being a joint stock company, there shall be delivered to the Registrar a list showing the names, addresses, and occupations of the directors or other managers, if any, of the company, and a copy of any Act of Parliament, Letters

Patent, deed of settlement, contract of co-partnership, or other instrument constituting or regulating the company. — E. § 253; N. S. W. a. (No. 40 of 1899) 172; V. a. (No. 1074) 164; T. a. (33 Vic. No. 22) 215; Q. e. (27 Vic. No. 4) 178; W. A. a. (56 Vic. No. 8) 86; N. Z. 276.

Power for existing company to register amount of stock instead of shares. 85. Where a joint stock company, authorised to register under this Act, has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the company, and the names of the persons who are holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration. — E. § 252; N. S. W. a. (No. 40 of 1899) 173; V. a. (No. 1074) 165; T. a. (33 Vic. No. 22) 216; Q. e. (27 Vic. No. 4) 179; W. A. a. (56 Vic. No. 8) 87; N. Z. 277.

Authentication of statements of existing companies. 86. The lists of members and directors, and any other particulars relating to the company hereby required to be delivered to the Registrar, shall be verified by a declaration, made in pursuance of this Act, of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company. — E. § 254; N. S. W. a. (No. 40 of 1899) 174; V. a. (No. 1074) 166; T. a. (33 Vic. No. 22) 217; Q. e. (27 Vic. No. 4) 180; W. A. a. (56 Vic. No. 8) 88; N. Z. 278.

Registrar may require evidence as to nature of company. 87. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or is not a joint stock company, as hereinbefore defined. — E. § 255; N. S. W. a. (No. 40 of 1899) 175; V. a. (No. 1074) 167; T. a. (33 Vic. No. 22) 218; Q. e. (27 Vic. No. 4) 181; W. A. a. (56 Vic. No. 8) 89; N. Z. 279.

Exemption of certain companies from payment of fees. 88. No fees shall be charged in respect of the registration, in pursuance of this Part of this Act, of any company in cases where such company is not registered as a limited company, or where, previously to its being registered as a limited company, the liability of the shareholder was limited by some other Act of the Parliament of the said Province, or by Letters Patent. — E. § 257; N. S. W. a. (No. 40 of 1899) 177; V. a. (No. 1074) 169; T. a. (33 Vic. No. 22) 220; Q. e. (27 Vic. No. 4) 183; W. A. a. (56 Vic. No. 8) 90; N. Z. 280.

Power to company to change name. 89. Every company authorised by this part of this Act to register with limited liability, shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited". — E. § 258; N. S. W. a. (No. 40 of 1899) 178; V. a. (No. 1074) 170; T. a. (33 Vic. No. 22) 221; Q. e. (27 Vic. No. 4) 184; W. A. a. (56 Vic. No. 8) 91; N. Z. 281.

Registration of existing companies to be noted in Government Gazette. 90. Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees as are payable under the third and fourth Schedules hereto, the Registrar shall certify under his hand and seal that the company so applying for registration is incorporated as a company under this Act, and, in the case of a limited company, that it is limited; and thereupon such company shall be incorporated and shall have perpetual succession and a common seal, and the Registrar shall notify such certificate in the *Government Gazette*. — E. § 259; N. S. W. a. (No. 40 of 1899) 179; V. a. (No. 1074) 171; T. a. (33 Vic. No. 22) 222; Q. e. (27 Vic. No. 4) 185; W. A. a. (56 Vic. No. 8) 92; N. Z. 282.

Certificate to be evidence of compliance with Act. 91. Such certificate, or the notification in the *Government Gazette*, shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act. — N. S. W. a. (No. 40 of 1899) 180; V. a. (No. 1074) 172; T. a. (33 Vic. No. 22) 223; Q. e. (27 Vic. No. 4) 186; W. A. a. (56 Vic. No. 8) 93; N. Z. 283.

Vesting of property in company. 92. All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations and choses in action as may belong to or be vested in the company at the date of its registration under this Act, shall, on incorporation, pass to and vest in the company so incorporated. — E. § 260; N. S. W. a. (No. 40 of 1899)

181; V. a. (No. 1074) 173; T. a. (33 Vic. No. 22) 224; Q. e. (27 Vic. No. 4) 187; W. A. a. (56 Vic. No. 8) 94; N. Z. 284.

Registration under this Act not to affect obligations incurred previously to registration. 93. The registration in pursuance of this Part of this Act of any company shall not affect or prejudice the liability of such company or any member thereof to have enforced against it or him, or affect or prejudice such company's right to enforce any debt or obligation incurred or any contract entered into by, to, with, or on behalf of such company previously to such registration. — E. § 261; N. S. W. a. (No. 40 of 1899) 182; V. a. (No. 1074) 174; T. a. (33 Vic. No. 22) 225; Q. e. (27 Vic. No. 4) 188; W. A. a. (56 Vic. No. 8) 95; N. Z. 285.

Continuation of existing actions. 94. All such actions or other legal proceedings as may at the time of the registration of any company registered in pursuance of this Part of this Act have been commenced by or against such company or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of such company upon any judgment, decree, or order obtained in any action, or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding up the company. — E. § 262; N. S. W. a. (No. 40 of 1899) 183; V. a. (No. 1074) 175; T. a. (33 Vic. No. 22) 226; Q. e. (27 Vic. No. 4) 189; W. A. a. (56 Vic. No. 8) 96; N. Z. 286.

Effect of registration under Act. 95. When a company is registered under this Act in pursuance of this Part thereof, all provisions contained in any Act of Parliament, deed of settlement, Letters Patent, or other instrument constituting or regulating the company, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered memorandum and registered articles; and all the provisions of this Act shall apply to such company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following: I. That Table A, in the second Schedule of this Act, shall not, unless adopted by special resolution, apply to any company registered under this Part of this Act; II. That the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered; III. That no company shall have power to alter any provision contained in any Act of Parliament relating to the company; IV. That no company shall have power, without the sanction of the Governor, to alter any provision contained in any Letters Patent relating to the company; V. That in the event of the company being wound up, every person shall be a contributory in respect of the debts and liabilities of the company contracted prior to registration who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any such contributory, or the marriage of such contributory, being a female, the provisions hereinafter contained with respect to the representatives of deceased contributories, and the trustees of insolvent contributories, and the consequences of the marriage of female contributories shall apply; VI. That nothing herein contained shall authorise any company to alter any such provisions contained in any deed of settlement, contract of co-partnership, Letters Patent, or other instrument constituting or regulating the company, as would, if such company had originally been formed under this Act, have been contained in the memorandum, and are not authorised to be altered by this Act. But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act, in pursuance of this Part thereof, by virtue of any Act of Parliament, deed of settlement, contract of copartnership, Letters Patent, or other instrument constituting or regulating the company. — E. § 263; N. S. W. a. (No. 40 of 1899) 184; V. a. (No. 1074) 176; T. a. (33 Vic. No. 22) 227; Q. e. (27 Vic. No. 4) 190; W. A. a. (56 Vic. No. 8) 97; N. Z. 287, 288.

Power of Court to restrain proceedings. 96. The Court may, at any time after the presentation of a petition for winding up a company registered in pursuance of this Part of this Act, and before making an order for winding up the company, upon the application by motion of any creditor of the company, restrain further proceedings in any action, or other legal proceeding against any contributory of the company, as well as against the company, as hereinbefore provided, upon such terms as the Court thinks fit. — E. § 265; V. a. (No. 1074) 177; T. a. (33 Vic. No. 22) 228; Q. e. (27 Vic. No. 4) 191; W. A. a. (56 Vic. No. 8) 98; N. Z. 289.

Effect of order for winding up company. 97. When an order has been made for winding up a company registered in pursuance of this Part of this Act, in addition to the provisions hereinbefore contained, it is hereby further provided that no action or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose. — E. § 266; V. a. (No. 1074) 178; T. a. (33 Vic. No. 22) 229; Q. e. (27 Vic. No. 4) 192; W. A. a. (56 Vic. No. 8) 99; N. Z. 290.

Part V. The Winding-up of Companies.

Act not to apply to limited company. 98. This Part of this Act shall not apply to a limited company registered under *The Mining Companies Act, 1881*. — Under the *Companies Act, 1864*, it was held that an order for winding up a company might be granted by the Supreme Court of South Australia, notwithstanding the fact that the company was registered in England, and was in voluntary liquidation there, it appearing that the company possessed property in this Province, and was carrying on business here. — *In re North Australian Territory Co., Ltd.*, 23 S. A. L. R. 163.

Liability of members.

Liability of members. 99. Where a company is wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts of the company, and the costs, charges, and expenses of winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following, that is to say: I. No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for one year or upwards prior to the commencement of the winding-up; II. No past member shall be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member; III. No past member shall¹⁾ be liable to contribute to the assets of the company, unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act; IV. If the company be limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member; V. If the company be limited by guarantee under *The Companies Act, 1864*, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association; VI. Nothing in this Act contained shall invalidate any provision contained in any policy of insurance, or other contract, whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract; VII. No sum due to any member of a company in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company payable to such member in case or competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories among themselves. — E. § 123 (1); N. S. W. a. (No. 40 of 1899) 33; V. a. (No. 1074) 39; T. a. (33 Vic. No. 22) 40; Q. e. (27 Vic. No. 4) 37; W. A. a. (56 Vic. No. 8) 101; N. Z. 66—68.

Liability of directors. 100. With respect to contributions to be required in the event of the winding up of a limited company from any director, or manager, whose liability is unlimited under this Act or under Act No. 22 of 1870-71, the following rules shall apply: I. Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any)

¹⁾ *Sic*; obviously "shall"

to contribute as an ordinary member, be liable to contribute as if he were, at the date of the commencement of such winding-up, a member of an unlimited company; II. No contribution required from any past director or manager, who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company; III. No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company; IV. Subject to the provisions contained in the articles of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up. — E. § 123 (2); N. S. W. a. (No. 40 of 1899) 35; W. A. a. (56 Vic. No. 8) 102; N. Z. 86.

Nature of liability of contributory. 101. The liability of any person to contribute to the assets of a company, in the event of the same being wound up, shall be deemed to create a specialty debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made, as hereinafter mentioned, for enforcing such liability¹). — E. § 125; N. S. W. a. (No. 40 of 1899) 80; V. a. (No. 1074) 72; T. a. (33 Vic. No. 22) 107; Q. e. (27 Vic. No. 4) 74; W. A. a. (56 Vic. No. 8) 103; N. Z. 174.

Contributories in case of death. 102. Where any contributory dies, either before or after he has been placed on the list of contributories hereinafter mentioned, his representative shall be liable, in due course of administration, to contribute to the assets of the company in discharge of the liability of such deceased contributory, and shall be deemed to be a contributory accordingly. — E. § 126; N. S. W. a. (No. 40 of 1899) 81; V. a. (No. 1074) 73; T. a. (33 Vic. No. 22) 108; Q. e. (27 Vic. No. 4) 75; W. A. a. (56 Vic. No. 8) 104; N. Z. 175.

Contributories in case of insolvency. 103. Where a contributory becomes insolvent, either before or after he has been placed on the list of contributories, his trustee shall, unless he shall disclaim the shares of such contributory under *The Insolvent Act, 1886*, be deemed to be a contributory in respect of such shares. — E. § 127; N. S. W. a. (No. 40 of 1899) 82; V. a. (No. 1074) 74; T. a. (33 Vic. No. 22) 109; Q. e. (27 Vic. No. 4) 76; W. A. a. (56 Vic. No. 8) 105; N. Z. 176.

Marriage of female contributory. 104. Where a female contributory marries, either before or after she has been placed on the list of contributories, her separate property, present and future, shall be liable to contribute to the assets of the company, and her husband shall also be liable so to contribute to the extent of all property whatsoever belonging to his wife which he shall have acquired or become entitled to from or through his wife, after deducting therefrom any payments made by him, and any sums for which judgment may have been *bona fide* recovered against him in any legal proceeding in respect of any matters as to which his wife was liable before her marriage; but he shall not be liable to contribute any further or otherwise. This section shall be subject to section 19 of *The Married Women's Property Act, 1883-4*, as if this section had been included in such Act. — E. § 128; N. S. W. a. (No. 40 of 1899) 83; V. a. (No. 1074) 75, 176 (5), 184; T. a. (33 Vic. No. 22) 110, c. (59 Vic. No. 19) 21; Q. e. (27 Vic. No. 4) 77, 190 (5), 194; W. A. a. (56 Vic. No. 8) 106, 192.

Winding-up under order of Court.

Circumstances under which company may be wound up under order of Court. 105. A company may be wound up under an order of the Court under the following circumstances, that is to say: I. When the company has passed a special resolution requiring the company to be wound up under order of the Court; II. When the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; III. When the members are reduced in number to less than five; IV. When the company is unable to pay its debts; V. When the Court is of opinion that it is just and equitable that the company should be wound up. — E. § 129; N. S. W. a. (No. 40 of 1899) 84; V. a. (No. 1074) 76; T. a. (33 Vic. No. 22) 111; Q. e. (27 Vic. No. 4) 78; W. A. a. (56 Vic. No. 8) 107; N. Z. 177.

¹) *Sic*; obviously "liability".

Company when deemed unable to pay its debts. 106. A company shall be deemed unable to pay its debts: I. When a creditor, by assignment or otherwise, to whom the company is indebted at law or in equity in a sum not less than twenty-five pounds then due, has served on the company, by leaving the same at its registered office, a demand under his hand, or if such creditor be a corporation then under the seal of such corporation, requiring the company to pay the sum so due, and the company has, for three weeks succeeding the service of such demand, neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor; II. When execution or other process issued on a judgment, decree, or order obtained in any Court in favor of any creditor at law or in equity in any proceeding instituted by such creditor against the company is returned unsatisfied, in whole or in part; III. When it is proved to the satisfaction of the Court that the company is unable to pay its debts. — E. § 130; N. S. W. a. (No. 40 of 1899) 86; V. a. (No. 1074) 77; T. a. (33 Vic. No. 22) 112; W. A. a. (56 Vic. No. 8) 108; N. Z. 178.

Application for winding-up to be by petition. 107. An application to the Court for an order for the winding-up of a company shall be by petition presented either by the company or by one or more creditor or creditors, shareholder or shareholders, contributory or contributories, or by all or any of such parties, together or separately; but no contributory of a company shall be capable of presenting a petition for winding up such company unless the members of the company are reduced to less than five, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held by him and registered in his name for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder. — E. § 137; N. S. W. a. (No. 40 of 1899) 89, 90; V. a. (No. 1074) 78; T. a. (33 Vic. No. 22) 114, 115; Q. e. (27 Vic. No. 4) 81, f. (53 Vic. No. 18) 43; W. A. a. (56 Vic. No. 8) 109; N. Z. 179, 180. — When a company has no registered office in South Australia the Supreme Court may order that service of a petition to wind up the company on a director of the company shall be regarded as service upon the company. — *In re Portable Gas Co., Ltd.*, 25 S. A. L. R. 86.

Order on petition to be in favour of all creditors and contributories. 108. Every order made upon any such petition shall operate in favor of all the creditors and all the shareholders and contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a shareholder or contributory; and the Court may refer to the Master of the Court any matter arising under this Act. — E. § 138; N. S. W. a. (No. 40 of 1899) 89 (2); V. a. (No. 1074) 78; T. a. (33 Vic. No. 22) 114; Q. e. (27 Vic. No. 4) 81; W. A. a. (56 Vic. No. 8) 110; N. Z. 179 (1).

Commencement of winding-up by Court. 109. The winding-up of a company under order of the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up. — E. § 139; N. S. W. a. (No. 40 of 1899) 91; V. a. (No. 1074) 79; T. a. (33 Vic. No. 22) 117; Q. e. (27 Vic. No. 4) 83; W. A. a. (56 Vic. No. 8) 111; N. Z. 181.

Court may grant injunction. 110. The Court may, at any time after the presentation of a petition for an order for the winding-up a company under this Act, and before making such order, upon the application of the company or of any creditor, shareholder, or contributory of the company, restrain further proceedings in any action or proceeding against the Company upon such terms as the Court thinks fit; and may also, at any time after the presentation of such petition, and before the first nomination of a liquidator, nominate provisionally an official liquidator of the estate and effects of the company. — E. §§ 140, 265; N. S. W. a. (No. 40 of 1899) 92; V. a. (No. 1074) 80; T. a. (33 Vic. No. 22) 118; Q. e. (27 Vic. No. 4) 84; W. A. a. (56 Vic. No. 8) 112; N. Z. 289.

Powers of Court on hearing petition. 111. Upon hearing the petition, the Court may grant the application wholly or in part, or may dismiss the same, with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just. — E. § 141; N. S. W. a. (No. 40 of 1899) 93; V. a. (No. 1074) 81; T. a. (33 Vic. No. 22) 119; Q. e. (27 Vic. No. 4) 85; W. A. a. (56 Vic. No. 8) 113; N. Z. 183 (1).

Actions to be stayed under order for winding-up. 112. When an order has been made for winding up a company, no action or other proceeding shall be continued or commenced against the company, except by leave of the Court, and subject to such terms as the Court may impose. — E. §§ 142, 266, 271; N. S. W. a. (No. 40 of

1899) 94; V. a. (No. 1074) 82, 178, 186; T. a. (33 Vic. No. 22) 120; Q. e. (27 Vic. No. 4) 86, 192, 196; W. A. a. (56 Vic. No. 8) 114, 191; N. Z. 244, 290.

Copy of order to be forwarded to Registrar of Companies. 113. When an order has been made for winding up a company, a copy of such order shall forthwith be forwarded by the company to the Registrar, who shall make a minute thereof in his books relating to the company. — E. § 143; N. S. W. a. (No. 40 of 1899) 96; V. a. (No. 1074) 83; T. a. (33 Vic. No. 22) 121; Q. e. (27 Vic. No. 4) 87; W. A. a. (56 Vic. No. 8) 115; N. Z. 183 (2).

Power of Court to transmit winding-up to Court of Insolvency. 114. 1. Where the Court makes an order for winding up a company, it may direct all or any subsequent proceedings for winding up the same to be had before the Court of Insolvency or any Local Court of Insolvency; and upon such order being made, the Court of Insolvency or the Local Court of Insolvency therein named shall have the same jurisdiction and may exercise the same powers with respect to winding up such company, or any proceedings in relation to such winding-up, as the Court by which such order is made has and could have exercised. 2. There shall be the same right of appeal to the Supreme Court from any order, determination, or direction of the Court of Insolvency or a Local Court of Insolvency under this section, and the proceedings upon such appeal shall be the same, as nearly as may be as if the order, determination, or direction had been made, arrived at, or given in an insolvency matter within the jurisdiction of such last-mentioned Court. — W. A. a. (56 Vic. No. 8) 117.

Official liquidators.

Official liquidators. 115. 1. The Court may from time to time appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators, for the purpose of winding up any company, but so that there shall not be more than three official liquidators at one time for the same company. 2. If more persons than one are appointed official liquidators, the Court shall declare whether any act hereby required or authorised to be done by the official liquidator is to be done by all or may be done by any one or more of such persons. 3. The Court may determine whether any and what security is to be given by any official liquidator on his appointment, and whether a declaration of secrecy is to be demanded. 4. During any period in which there shall be no official liquidator all the property of the company shall be deemed to be in the custody of the Court. 5. Any official liquidator may resign or be removed by the Court on due cause shown, and any vacancy in the office of an official liquidator appointed by the Court may be filled by the Court. 6. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more official liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs. — E. § 149 (1—8); N. S. W. a. (No. 40 of 1899) 101, 102; V. a. (No. 1074) 88, cp. V. f. (No. 1482) 134; T. a. (33 Vic. No. 22) 125, 126; Q. e. (27 Vic. No. 4) 91, 92; W. A. a. (56 Vic. No. 8) 118; N. Z. 186—189.

Style and duties of official liquidator. 116. The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name, and shall take into his custody, or under his control, all the property, effects, and choses in action to which the company is or appears to be entitled, and shall, subject to the control of the Court, perform such duties in reference to the winding-up of the company as may be necessary. — E. §§ 149 (9), 150; N. S. W. a. (No. 40 of 1899) 103; V. a. (No. 1074) 89; T. a. (33 Vic. No. 22) 127; Q. e. (27 Vic. No. 4) 93; W. A. a. (56 Vic. No. 8) 119.

Powers of official liquidator. 117. The official liquidator shall have power: I. To bring or defend any action, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company; II. To carry on the business of the company, so far as may be necessary for the beneficial winding-up of the same; III. To sell the real and personal property, effects, and choses in action of the company, together or in parcels, by public auction or private contract, with power to convey and transfer the property sold to any person or company; IV. To do all acts, and execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal; V. To prove, rank, claim, and draw a dividend in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and to

receive dividends in respect of such balance as a separate debt due from the insolvent, and ratably with the other separate creditors; VI. To draw, accept, make, and indorse any bill of exchange or promissory note, in the name and on behalf of the company; also to raise, upon the security of the assets of the company, from time to time, any requisite sum or sums of money, and the drawing, accepting, making, or indorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company, shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or indorsed by or on behalf of such company in the course of carrying on the business thereof; VII. To take out (if necessary), in his official name, letters of administration to the estate of any deceased contributory, and to do, in his official name, any other act that may be necessary for obtaining payment of any moneys due from a contributory or from his estate, and which act cannot be conveniently done in the name of the company. In all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself; VIII. To employ a solicitor to assist him in the performance of his duties; IX. To appoint a special manager of secretary of the estate or business of the company during such time as he may see fit, at such remuneration as he may determine, and with such powers as may be entrusted to him, in writing, under the hand of the official liquidator, if he shall be satisfied that the nature of the estate or business of the company, in the interests of the creditors or contributories generally, requires such an appointment; X. To apply to the Court for directions in relation to any particular matter arising under the winding-up; XI. To do all such other things as may be necessary for winding up the affairs of the company, and distributing its assets. — E. § 151 (1, 2); N. S. W. a. (No. 40 of 1899) 104; V. a. (No. 1074) 90; T. a. (33 Vic. No. 22) 128; Q. e. (27 Vic. No. 4) 94; W. A. a. (56 Vic. No. 8) 120; N. Z. 195.

Discretion of official liquidator. 118. The Court may, by the order appointing an official liquidator, whether provisionally or otherwise, or by any subsequent order, restrain him from exercising any of the above powers without the sanction or intervention of the Court. — E. § 151 (3—5); N. S. W. a. (No. 40 of 1899) 105; V. a. (No. 1074) 91; T. a. (33 Vic. No. 22) 129; Q. e. (27 Vic. No. 4) 95; W. A. a. (56 Vic. No. 8) 121; N. Z. 196.

Collection and application of assets. 119. As soon as may be after the making of an order for winding up a company, other than a no-liability company, the official liquidator shall settle a list of contributories with power to apply to the Court to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities. Any list of contributories settled by the official liquidator shall be *prima facie* evidence of the liability of the persons named therein to be contributories. — E. § 163 (1); N. S. W. a. (No. 40 of 1899) 107; V. a. (No. 1074) 93; T. a. (33 Vic. No. 22) 132; Q. e. (27 Vic. No. 4) 97; W. A. a. (56 Vic. No. 8) 122; N. Z. 197.

Provision as to representative contributories. 120. In settling the list of contributories, the official liquidator shall distinguish between persons who are contributories in their own right and persons who are contributories as representing or being liable for the debts of others. It shall not be necessary, where the representative, other than the heirs or devisees, of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, but such heirs or devisees may be added by the Court as and when it thinks fit. — E. § 163 (2); N. S. W. a. (No. 40 of 1899) 108; V. a. (No. 1074) 94; T. a. (33 Vic. No. 22) 132; Q. e. (27 Vic. No. 4) 98; W. A. a. (56 Vic. No. 8) 123; N. Z. 198.

Power of Court to require delivery of property. 121. The Court may, at any time after an order for winding up a company has been made, require any contributory for the time being settled on the list of contributories, or any trustee, receiver, banker, agent, or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and to which the company is *prima facie* entitled. — E. § 164; N. S. W. a. (No. 40 of 1899) 109; V. a. (No. 1074) 95; T. a. (33 Vic. No. 22) 133; Q. e. (27 Vic. No. 4) 99; W. A. a. (56 Vic. No. 8) 124; N. Z. 199 (1).

Power of Court to order payment of debts by contributory. Set-off. 122. 1. The Court may, on the application of the official liquidator, at any time after making an order for winding up a company, other than a no-liability company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made in manner in the said order mentioned of any moneys due from him or from the estate of the person whom he represents to the company, exclusive of any moneys which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made in pursuance of this part of this Act. 2. The Court may, in making such order, when the company is not limited, or when the contributory or the person whom he represents, is or was a director or manager with unlimited liability, allow to such contributory by way of set-off any moneys due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any moneys due to him as a member of the company in respect of any dividend or profit. 3. Where all the creditors of any company, whether limited or unlimited, are paid in full, any moneys due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call. — E. § 165; N. S. W. a. (No. 40 of 1899) 36, 110; V. a. (No. 1074) 96; T. a. (33 Vic. No. 22) 134; Q. e. (27 Vic. No. 4) 100; W. A. a. (56 Vic. No. 8) 125; N. Z. 86 (5), 199 (2).

Power of liquidator to make calls. 123. 1. The official liquidator may, at any time after an order has been made for winding up a company, other than a no-liability company, and either before or after he has ascertained the sufficiency of the assets of the company, make calls on, and the Court may, on application by the official liquidator, order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums deemed necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves. 2. The official liquidator may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same. — E. § 166; N. S. W. a. (No. 40 of 1899) 111; V. a. (No. 1074) 97; T. a. (33 Vic. No. 22) 135; Q. e. (27 Vic. No. 4) 101; W. A. a. (56 Vic. No. 8) 126; N. Z. 199 (3).

Power of official liquidator or Court to order payment into bank. 124. The official liquidator may require, and the Court may, on his application, order any contributory, purchaser, or other person from whom money is due to the company to pay the same into some bank named in such request or order and appointed by the Governor to be a bank for receiving such deposits, to the account of the official liquidator, instead of to the official liquidator, and such order may be enforced in the same manner as if it had directed payment to the official liquidator. — E. § 167 (1); N. S. W. a. (No. 40 of 1899) 112; V. a. (No. 1074) 98; T. a. (33 Vic. No. 22) 136; Q. e. (27 Vic. No. 4) 102; W. A. a. (56 Vic. No. 8) 127; N. Z. 200.

Regulation of account with official liquidator. 125. All moneys, bills, notes, and other securities paid and delivered into any bank in the event of a company being wound up by order of the Court, shall be subject to such order and regulation for the keeping of the account of such money and other effects, and for the payment and delivery in, or investment and payment and delivery out of the same as the Court directs. — E. § 167 (2); N. S. W. a. (No. 40 of 1899) 113; V. a. (No. 1074) 99; T. a. (33 Vic. No. 22) 137; Q. e. (27 Vic. No. 4) 103; W. A. a. (56 Vic. No. 8) 128; N. Z. 201.

Order conclusive evidence. 126. An order made by the Court, in pursuance of this Act, upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys, if any, thereby appearing to be due, or ordered to be paid, are due, and all other pertinent matters stated in such order are to be taken to be truly stated against all persons and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made. — E. § 168; N. S. W. a. (No. 40 of 1899) 115; V. a. (No. 1074) 101; T. a. (33 Vic. No. 22) 139; Q. e. (27 Vic. No. 4) 105; W. A. a. (56 Vic. No. 8) 129; N. Z. 203.

Official liquidator may exclude creditors not proving within certain time. 127. The official liquidator may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such proof. — E. § 169; N. S. W. a. (No. 40 of 1899) 116; V. a. (No. 1074) 102; T. a. (33 Vic. No. 22) 140; Q. e. (27 Vic. No. 4) 106; W. A. a. (56 Vic. No. 8) 130; N. Z. 204.

Official liquidator to adjust rights of contributories. 128. Subject to the order of the Court, on the application of any shareholder or contributory, the official liquidator shall adjust the rights of the shareholders or contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto. — E. § 170; N. S. W. a. (No. 40 of 1899) 117; V. a. (No. 1074) 103; T. a. (33 Vic. No. 22) 141; Q. e. (27 Vic. No. 4) 107; W. A. a. (56 Vic. No. 8) 131; N. Z. 205.

Dispositions after the commencement of the winding-up avoided. 129. Where a company is being wound up by order of the Court, all dispositions of the property, effects, and choses in action of the company, and every transfer of shares, or alteration in the *status* of the members of the company made between the commencement of the winding up and the order for winding-up, shall, unless the same be confirmed by the official liquidator or by the Court, be void. — E. § 205; N. S. W. a. (No. 40 of 1899) 152; V. a. (No. 1074) 138; T. a. (33 Vic. No. 22) 180; Q. e. (27 Vic. No. 4) 143; W. A. a. (56 Vic. No. 8) 132; N. Z. 242.

Dissolution of company. 130. When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly. — E. § 172 (1); N. S. W. a. (No. 40 of 1899) 119; V. a. (No. 1074) 105; T. a. (33 Vic. No. 22) 143; Q. e. (27 Vic. No. 4) 109; W. A. a. (56 Vic. No. 8) 133; N. Z. 207.

Registrar to make minute of dissolution of company. 131. Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such company. — E. § 172 (2); N. S. W. a. (No. 40 of 1899) 120; V. a. (No. 1074) 106; T. a. (33 Vic. No. 22) 144; Q. e. (27 Vic. No. 4) 110; W. A. a. (56 Vic. No. 8) 134; N. Z. 208 (1).

Penalty on not reporting dissolution of company. 132. If the official liquidator makes default in reporting to the Registrar, in the case of a company being wound up under an order of the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default. — E. § 172 (3); N. S. W. a. (No. 40 of 1899) 121; V. a. (No. 1074) 107; T. a. (33 Vic. No. 22) 145; Q. e. (27 Vic. No. 4) 111; W. A. a. (56 Vic. No. 8) 135; N. Z. 208 (2).

Petition to be *lis pendens*. 133. Any petition for winding up a company under this Act shall constitute a *lis pendens* within the meaning of any Act now or hereafter in force relating to the effect of a *lis pendens* upon purchasers or mortgagees. — N. S. W. a. (No. 40 of 1899) 122; V. a. (No. 1074) 108; T. a. (33 Vic. No. 22) 146; W. A. a. (56 Vic. No. 8) 136; N. Z. 209.

Voluntary winding-up of company.

Circumstances under which company may be wound up voluntarily. 134. A company may be wound up voluntarily: I. When the period, if any, fixed for the duration of the company by the articles expires; or when the event, if any, occurs, upon the occurrence of which it is provided by the articles that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily; II. When the company has passed a special resolution requiring the company to be wound up voluntarily. — E. § 182; N. S. W. a. (No. 40 of 1899) 130; V. a. (No. 1074) 114, 115; T. a. (33 Vic. No. 22) 156; Q. e. (27 Vic. No. 4) 119; W. A. a. (56 Vic. No. 8) 137; N. Z. 220.

Commencement of voluntary winding-up. 135. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorising such winding-up. — E. § 183; N. S. W. a. (No. 40 of 1899) 131; V. a. (No. 1074) 116; T. a. (33 Vic. No. 22) 157; Q. e. (27 Vic. No. 4) 120; W. A. a. (56 Vic. No. 8) 138; N. Z. 221.

Notice of resolution to wind up voluntarily. 136. Notice of any resolution passed for winding up a company voluntarily shall be given by advertisement in the *Government Gazette*, and a copy of such resolution shall be forthwith forwarded by the company to the Registrar, who shall make a minute thereof in his books relating to the company. — E. § 185; N. S. W. a. (No. 40 of 1899) 133; V. a. (No. 1074) 118; T. a. (33 Vic. No. 22) 159; Q. e. (27 Vic. No. 4) 122; W. A. a. (56 Vic. No. 8) 140; N. Z. 223.

Consequences of a voluntary winding-up. 137. The following consequences shall ensue upon the voluntary winding-up of a company: I. A liquidator or liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property; II. The company, in general meeting, shall appoint such person or persons as it thinks fit to be liquidator or liquidators, and may fix the remuneration to be paid to him or them; III. If several persons are appointed, all the provisions herein contained, in reference to one liquidator, shall apply to them; IV. Upon the appointment of a liquidator, all the powers of the directors shall cease, except in so far as the company in general meeting, or the liquidator, may sanction the continuance of such powers; V. When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two; VI. The liquidator may exercise all powers and discretions, and shall perform all duties by this Act given to the official liquidator; VII. Any list of contributories settled by the liquidator shall be *prima facie* evidence of the liability of the persons named therein to be contributories. — E. § 186; N. S. W. a. (No. 40 of 1899) 134; V. a. (No. 1074) 119; T. a. (33 Vic. No. 22) 160; Q. e. (27 Vic. No. 4) 123; W. A. a. (56 Vic. No. 8) 141; N. Z. 224.

Power of company to delegate authority to appoint liquidators. 138. A company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by special resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators, or any of them, and supplying any vacancies in the appointment of liquidators; or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidator and the manner in which they are to be exercised; and any act done by the creditors in pursuance of such delegated power, shall have the same effect as if it had been done by the company. — E. § 190; N. S. W. a. (No. 40 of 1899) 136; V. a. (No. 1074) 121; T. a. (33 Vic. No. 22) 162; Q. e. (27 Vic. No. 4) 125; W. A. a. (56 Vic. No. 8) 142; N. Z. 225.

Arrangement, when binding on creditors. 139. Any arrangement entered into between a company about to be wound up voluntarily, or in the course of being wound up voluntarily, and its creditors, shall be binding on the company if sanctioned by special resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned. Creditors for under five pounds are, for the purposes of this section, to be reckoned in value only. — E. § 191 (1); N. S. W. a. (No. 40 of 1899) 159 (1); V. a. (No. 1074) 122; T. c. (59 Vic. No. 19) 19; Q. e. (27 Vic. No. 4) 126; W. A. a. (56 Vic. No. 8) 143; N. Z. 260.

Appeal. 140. Any creditor, contributory, or member of a company that has, in manner aforesaid, entered into any arrangements with its creditors, may, within three weeks from the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary, or confirm the same. — E. § 191 (2); N. S. W. a. (No. 40 of 1899) 159 (2); V. a. (No. 1074) 123; T. c. (59 Vic. No. 19) 19; Q. e. (27 Vic. No. 4) 127; W. A. a. (56 Vic. No. 8) 144; N. Z. 260.

Power of liquidators to call general meeting. 141. Where a company is being wound up voluntarily, the liquidator may, from time to time, during the continuance of such winding-up, summon general meetings of the company, for the purpose of obtaining the sanction of the company, by special resolution, or for any other purposes he thinks fit; and in the event of the winding-up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year, and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing his acts and dealings, and the manner in which the winding-up has been conducted during the preceding year. — E. § 194; N. S. W. a. (No. 40 of 1899) 138; V. a. (No. 1074) 125; T. a. (33 Vic. No. 22) 166; Q. e. (27 Vic. No. 4) 129; W. A. a. (56 Vic. No. 8) 145; N. Z. 227.

Power to fill up vacancy in liquidators. 142. Where any vacancy occurs in the office of a liquidator appointed by the company, by death, resignation, or otherwise, the company in general meeting may (subject to any arrangement they may have entered into with their creditors) fill up such vacancy, and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidator (if any) or by any contributory of the company; and shall be deemed

to have been duly held, if held in manner prescribed by the articles of the company, or in such manner as may, on application by the continuing liquidator (if any) or by any contributory or member of the company, be determined by the Court. — E. § 189; N. S. W. a. (No. 40 of 1899) 139; V. a. (No. 1074) 126; T. a. (33 Vic. No. 22) 167; Q. e. (27 Vic. No. 4) 130; W. A. a. (56 Vic. No. 8) 146; N. Z. 228.

Power of Court to appoint a liquidator or liquidators. 143. Where, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a creditor, contributory, or member of the company, appoint a liquidator or liquidators. The Court may also, on due cause shown, remove any liquidator, and appoint another liquidator to act in a voluntary winding-up. — E. § 186; N. S. W. a. (No. 40 of 1899) 140; V. a. (No. 1074) 127; T. a. (33 Vic. No. 22) 168; Q. e. (27 Vic. No. 4) 131; W. A. a. (56 Vic. No. 8) 147; N. Z. 229.

Liquidator on conclusion of winding-up to prepare an account. 144. As soon as the affairs of the company are fully wound up, the liquidator shall prepare an account showing the manner in which such winding-up has been conducted, and the property of the company disposed of, and thereupon he shall call a general meeting of the company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidator. The meeting shall be called by advertisement, specifying the time, place, and object, of such meeting, and such advertisement shall be published in the *Government Gazette* one month at least previously to the meeting. — E. § 195 (1, 2); N. S. W. a. (No. 40 of 1899) 141; V. a. (No. 1074) 128; T. a. (33 Vic. No. 22) 169; Q. e. (27 Vic. No. 4) 132; W. A. a. (56 Vic. No. 8) 148; N. Z. 230.

Liquidator to report meeting to Registrar of Companies. 145. The liquidator shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such return, the company shall be deemed to be dissolved. If the liquidator make default in making such return to the Registrar, he shall incur a penalty not exceeding five pounds for every day during which such default continues. — E. § 195 (3); N. S. W. a. (No. 40 of 1899) 142, c. (No. 22 of 1906) 18; V. a. (No. 1074) 129; T. a. (33 Vic. No. 22) 170; Q. e. (27 Vic. No. 4) 133; W. A. a. (56 Vic. No. 8) 149; N. Z. 231.

Saving rights to creditors. 146. The voluntary winding-up of a company shall not be a bar to the right of any creditor of such company to have the same wound up under order of the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up. — E. § 197; N. S. W. a. (No. 40 of 1899) 144; V. a. (No. 1074) 131; T. a. (33 Vic. No. 22) 172; Q. e. (27 Vic. No. 4) 135; W. A. a. (56 Vic. No. 8) 150; N. Z. 233.

Power of Court to adopt proceedings of voluntary winding up. 147. Where a company is being wound up voluntarily and proceedings are taken to have it wound up under order of the Court, the Court may, notwithstanding that it makes an order directing the company to be wound up under order of the Court, provide in such order, or in any other order, for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up. — E. § 198; N. S. W. a. (No. 40 of 1899) 145; V. a. (No. 1074) 132; T. a. (33 Vic. No. 22) 173; Q. e. (27 Vic. No. 4) 136; W. A. a. (56 Vic. No. 8) 151; N. Z. 234.

Provisions applying to winding-up, whether under the order of the Court or voluntary.

Liquidator. 148. In the sections in this Part of this Act hereinafter contained the word "liquidator" shall include "official liquidator".

Power of Court to stay proceedings. 149. The Court may, at any time after the commencement of the winding-up of a company, upon the application by motion of any creditor, shareholder, or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit. — E. § 144; N. S. W. a. (No. 40 of 1899) 97; V. a. (No. 1074) 84; T. a. (33 Vic. No. 22) 122; Q. e. (27 Vic. No. 4) 88; W. A. a. (56 Vic. No. 8) 116; N. Z. 184.

Effect of winding-up on status of company. 150. When a company is being wound up the company shall, from the date of the commencement of such winding-up, subject, however, to any order made under section 149, cease to carry on its business, except in so far as may be required for the beneficial winding-up thereof,

and all transfers of shares, except transfers made to or with the sanction of the liquidator, or alteration in the status of the members of the company taking place after the commencement of such winding-up, shall be void; but its corporate state, and all its corporate powers, shall, notwithstanding that it is otherwise provided by its articles, continue until the affairs of the company are wound up. — E. § 205; N. S. W. a. (No. 40 of 1899) 132; V. a. (No. 1074) 117; T. a. (33 Vic. No. 22) 158; Q. e. (27 Vic. No. 4) 121; W. A. a. (56 Vic. No. 8) 139; N. Z. 222.

Priority of debts. 151. 1. In the distribution of the assets of any company being wound up there shall be paid in priority to all other debts: a) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the date of the commencement of the winding-up, not exceeding fifty pounds; and b) All wages of any laborer or workman, not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the company during two months before the commencement of the winding-up: Provided that where any laborer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the commencement of the winding-up. 2. The above-mentioned debts shall rank equally between themselves and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions between themselves. 3. Subject to the retention of such sums as may be necessary for the costs of the winding-up or otherwise, the above-mentioned debts shall be discharged forthwith, so far as the assets of the company are sufficient. — E. § 209; N. S. W. a. (No. 40 of 1899) 134 (1); V. f. (No. 1482) 148; T. c. (59 Vic. No. 19) 29; Q. e. (27 Vic. No. 4) 123 (1), h. (56 Vic. No. 24) 21; W. A. a. (56 Vic. No. 8) 147; N. Z. 249.

Company's property, how disposed of. 152. The property of the company shall, subject to the provisions of the last preceding section, be applied in satisfaction of its liabilities *pari passu*, and subject thereto shall, unless it be otherwise provided by the articles, be distributed amongst the members according to their rights and interests in the company. — E. § 186 (1); N. S. W. a. (No. 40 of 1899) 134 (1); V. a. (No. 1074) 119 (1); T. a. (33 Vic. No. 22) 160 (1); Q. e. (27 Vic. No. 4) 123 (1); W. A. a. (56 Vic. No. 8) 155; N. Z. 224.

Court may have regard to wishes of creditors, shareholders, or contributories. Liquidator to summon meetings of creditors, contributories, or shareholders. 153. 1. The Court may, in determining whether a company is to be wound up under order of the Court or voluntarily, and also in the appointment of an official liquidator or official liquidators, and in all other matters relating to a winding-up, either under order of the Court or voluntarily, have regard to the wishes of the creditors, contributories, or shareholders as proved to it by sufficient evidence, and may direct meetings of the creditors, contributories, or shareholders to be summoned, held, and regulated in such manner as the Court may direct, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of such meeting to the Court. 2. The liquidator may from time to time summon general meetings of the creditors or contributories, or in case of a no-liability company, of the shareholders, for the purpose of ascertaining their wishes, and he shall summon meetings at such times as such creditors, contributories, or shareholders, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors, contributories, or shareholders, as the case may be. 3. Subject to the power of control given to the Court, the liquidator shall, in the administration and realisation of the property of the company, have regard to any directions that may be given by resolution of the creditors, contributories, or shareholders, at any general meeting, and any directions so given by the creditors shall, in case of conflict, be deemed to override any directions given by the contributories or shareholders. 4. In the case of a meeting of creditors, regard shall be had to the value of the debts due to each creditor; and in the case of contributories or shareholders, to the number of votes conferred on each contributory or shareholder by the articles of the company. — E. §§ 145, 219; N. S. W. a. (No. 40 of 1899) 100, 148; V. a. (No. 1074) 86, 135; T. a. (33 Vic. No. 22) 124, 176; Q. e. (27 Vic. No. 4) 90, 139; W. A. a. (56 Vic. No. 8) 156; N. Z. 185, 236.

Power for liquidators, creditors, contributories, or shareholders in voluntary winding-up, to apply to Court. 154. 1. Where a company is being wound up under order of the Court or voluntarily, the liquidator, or any creditor, contributory, or shareholder of the company, may apply to the Court to determine any question arising in the matter of such winding-up, to direct or control the exercise of any power or discretion vested in the liquidator, and whether or not such power or discretion is subject to the sanction of any resolution or meeting of the company or its contributories, or shareholders, or of creditors, and, in the case of a voluntary winding-up, to exercise as to enforcing calls, or as to the staying of actions or other proceedings or as to any other matter, all or any of the powers which the Court might exercise if the company were being wound up by order of the Court. 2. The Court, if satisfied that the determination of such question, the direction or control of such power or discretion, or the required exercise of power, will be just and beneficial, may accede wholly or partially to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as justice may require. — E. § 193; N. S. W. a. (No. 40 of 1899) 137; V. a. (No. 1074) 124; T. a. (33 Vic. No. 22) 165; Q. e. (27 Vic. No. 4) 128; W. A. a. (56 Vic. No. 8) 157; N. Z. 226.

No call in certain cases. 155. As to any company registered after the coming into operation of *The Companies Act Amendment Act, 1886*, unless the contrary shall be provided by the memorandum or articles, no call shall be made for the purpose only of placing shares not fully paid up upon an equality with shares issued as paid up to a greater amount in cases where such greater amount shall not have been actually paid in cash. — W. A. a. (56 Vic. No. 8) 158.

Power of Court to summon persons before it, suspected of having property of company. Examination of parties by Court. 156. 1. The Court may, after it has made an order for winding-up the company, summon before it the liquidator or any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company; and the Court may require any such liquidator, officer, or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company. 2. If any person so summoned, after being tendered a reasonable sum for his expenses, refuses or neglects to come before the Court at the time appointed, having no lawful impediment made known to the Court at time of sitting and allowed by it, the Court may cause such person to be apprehended and brought before the Court for examination. 3. Where any person claims any lien on papers, deeds, writings, or documents produced by him, his production thereof shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien. 4. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it under this section concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person and require him to subscribe the same. — E. § 174; N. S. W. a. (No. 40 of 1899) 123, 124; V. a. (No. 1074) 109, 110; T. a. (33 Vic. No. 22, 147, 148; Q. e. (27 Vic. No. 4) 112, 113; W. A. a. (56 Vic. No. 8) 159; N. Z. 210, 211.

Power to arrest contributory about to abscond or to remove or conceal any of his property. 157. The Court may at any time before or after it has made an order for winding-up a company, or after the passing of a resolution for winding-up a company voluntarily, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit the said Province or otherwise abscond, or to remove or conceal any of his goods or chattels for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, moneys, securities for moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order. — E. § 176; N. S. W. a. (No. 40 of 1899) 125; V. a. (No. 1074) 111; T. a. (33 Vic. No. 22) 149; Q. e. (27 Vic. No. 4) 114; W. A. a. (56 Vic. No. 8) 160; N. Z. 212.

Powers of Court cumulative. 158. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate

of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory, or debtor, or his estate, and such proceedings may be instituted accordingly. — E. § 177; N. S. W. a. (No. 40 of 1899) 126; V. a. (No. 1074) 112; T. a. (33 Vic. No. 22) 150; Q. e. (27 Vic. No. 4) 115; W. A. a. (56 Vic. No. 8) 161; N. Z. 213.

Creditors to receive interest before surplus is divided. 159. The contributories or shareholders shall not be entitled to have any surplus, after payment of twenty shillings in the pound on the debts of the company, divided amongst themselves until, first, the creditors of the company whose debts are entitled to carry interest shall have received interest on such debts at the rate of five pounds per centum per annum, to be calculated from the date of the order for winding up the company; and, secondly, all other creditors shall have been paid interest on their debts, from the same date, at the rate of four pounds per centum per annum. — Cp. E. § 237; V. f. (No. 1482) 153; W. A. a. (56 Vic. No. 8) 162. — As to distribution of surplus assets of a no-liability company, see note to § 219.

Costs of voluntary liquidation. 160. All costs, charges, and expenses properly incurred in the winding-up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company, in priority to all other claims. — E. §§ 171, 196; N. S. W. a. (No. 40 of 1899) 118, 143; V. a. (No. 1074) 104, 130; T. a. (33 Vic. No. 22) 142, 171; Q. e. (27 Vic. No. 4) 108, 130; W. A. a. (56 Vic. No. 8) 163; N. Z. 206, 232.

Provision in case of representative contributory not paying moneys ordered. 161. If any person, made a contributory as representative of a deceased contributory, makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the real estate and personal estate of such deceased contributory, or either of such estates, and of compelling payment thereof of the moneys due. — N. S. W. a. (No. 40 of 1899) 114; V. a. (No. 1074) 100; T. a. (33 Vic. No. 22) 138; Q. e. (27 Vic. No. 4) 104; W. A. a. (56 Vic. No. 8) 164; N. Z. 202.

Effect of winding-up on share capital of company limited by guarantee. 162. Where a company limited by guarantee and having a capital divided into shares is being wound up, any share capital that may not have been called up shall be deemed to be assets of the company, and to be a specialty debt due from each member to the company, to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidator. — E. § 123(3); N. S. W. a. (No. 40 of 1899) 99, 135; V. a. (No. 1074) 85, 120; T. a. (33 Vic. No. 22) 123, 161; Q. e. (27 Vic. No. 4) 89, 124; N. Z. 245.

The books of the company to be evidence. 163. When any company is being wound up, all books, accounts, and documents of the company and of the liquidator shall, as between the contributories or members of the company be *prima facie* evidence of the truth of all matters purporting to be therein recorded. — E. § 220; N. S. W. a. (No. 40 of 1899) 153; V. a. (No. 1074) 139; T. a. (33 Vic. No. 22) 181; Q. e. (27 Vic. No. 4) 144; W. A. a. (56 Vic. No. 8) 165; N. Z. 250.

As to disposal of books, accounts, and documents of company. 164. Where any company has been wound up under this Act, and is about to be dissolved, the books, accounts, and documents of the company and of the liquidators may be disposed of in such way as the Court, in the case of a winding-up under order of the Court, or the company, by special resolution, in case of a voluntary winding-up, shall direct; but, after the lapse of three years from the date of such dissolution no responsibility shall rest upon the company or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be made available for any party or parties claiming to be interested therein. — E. § 222; N. S. W. a. (No. 40 of 1899) 99, 135; V. a. (No. 1074) 85, 120; T. a. (33 Vic. No. 22) 123, 161; Q. e. (27 Vic. No. 4) 89, 124; W. A. a. (56 Vic. No. 8) 166; N. Z. 245.

Inspection of books. 165. When an order has been made for winding-up a company, the Court may make such order for the inspection by the creditors, members, and contributories of the company of its books and papers as the Court thinks just; and any books and papers in the possession of the company may be inspected by creditors, members, or contributories, in conformity with the order of the Court. — E. § 221; N. S. W. a. (No. 40 of 1899) 155; V. a. (No. 1074) 141; T. a. (33 Vic. No. 22) 183; Q. e. (27 Vic. No. 4) 146; W. A. a. (56 Vic. No. 8) 167; N. Z. 253.

Power of assignee to sue. 166. Any person to whom any chose in action belonging to the company is assigned in pursuance of this Act, may bring or defend any action relating to such chose in action in his own name. — N. S. W. a. (No. 40 of 1899) 156; V. a. (No. 1074) 142; T. a. (33 Vic. No. 22) 184; Q. e. (27 Vic. No. 4) 147; W. A. a. (56 Vic. No. 8) 168; N. Z. 157.

All debts or liabilities to be provable debts. 167. All debts or liabilities, present or future, liquidated or unliquidated, certain or contingent, to which a company shall be subject at the commencement of the winding-up, or to which the company may become subject by reason of any obligation incurred previously to such commencement, shall be deemed debts provable in the winding-up: Provided that nothing herein contained shall apply to demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise. — E. § 206; N. S. W. a. (No. 40 of 1899) 157; V. a. (No. 1074) 143; T. a. (33 Vic. No. 22) 185; Q. e. (27 Vic. No. 4) 148; W. A. a. (56 Vic. No. 8) 169.

Liquidator to make valuation of provable debts. 168. An estimate shall be made according to the rules so far as they may be applicable, and when they are not applicable, then, at the discretion of the liquidator, of the value of any such provable debt as aforesaid, which, by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value. — See notes to § 167, *supra*, and W. A. a. (56 Vic. No. 8) 170.

Person aggrieved by liquidator's estimate may appeal to Court. 169. Any person aggrieved by any estimate made by the liquidator as aforesaid may appeal to the Court, and the Court may, if it think the value of the debt or liability incapable of being fairly estimated, make an order to that effect, and upon such order being made, such debt or liability shall, for the purposes of this Act, be deemed not to be a provable debt; but if the Court think that the value of the debt or liability is capable of being fairly estimated, it may direct such value to be assessed before the Court with or without a jury, and may give all necessary directions for such purpose, and the amount of such value when assessed shall be a provable debt. — See notes to § 167, *supra*; W. A. a. (56 Vic. No. 8) 171, Cp. E. *Winding-up Rules, 1890*, 111.

Reading of section 6 of Supreme Court Act. 170. Section 6, sub-section 1., of *The Supreme Court Act, 1878*, shall be read as if the words "*or The Companies Act, 1892*" were inserted therein after the words "*The Companies Act, 1864*", and the same sub-section shall, in regard to companies, be subject to the provisions of this Act.

General scheme of liquidation may be sanctioned. 171. The liquidator may, with the sanction of a special resolution of the company, pay any classes of creditors in full, or make such compromise or other arrangements as the liquidator may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company whereby the company may be rendered liable. — E. § 214; N. S. W. a. (No. 40 of 1899) 158; V. a. (No. 1074) 144; T. a. (33 Vic. No. 22) 186; Q. e. (27 Vic. No. 4) 149; W. A. a. (56 Vic. No. 8) 173; N. Z. 258.

Power to compromise. Where compromise proposed, Court may order meeting of creditors to decide as to same. 172. The liquidator may, with the sanction of a special resolution of the company, compromise all calls, and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company, or the winding-up of the company, upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities. 1. Where any compromise or arrangement shall be proposed between a company, which is, at the time of the passing of this Act or afterwards, in the course of being wound up, and the creditors of such company, or any class of such creditors, the Court may, on the application in a summary way of any creditor or liquidator, order that a meeting of such creditors, or class of creditors, shall be summoned in such manner as the Court shall direct. 2. If a majority in number representing three-fourths in value of such creditors, or class of creditors, present either in person, or by attorney, or proxy at such

meeting and voting, shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors, or class of creditors, as the case may be, and also on the liquidator, members, and contributories of the company. Provided that where any creditor is secured, wholly or partially, the benefit of his security shall not be taken away or affected by any proceeding under this section. — E. § 214; N. S. W. a. (No. 40 of 1899) 160, 161; V. a. (No. 1074) 145, b. (No. 1269) 3—5; T. a. (33 Vic. No. 22) 188, c. (59 Vic. No. 19) 18, 19; Q. e. (27 Vic. No. 4) 150, f. (53 Vic. No. 18) 35; W. A. a. (56 Vic. No. 8) 174; N. Z. 258, 260.

Power for liquidators to accept shares, etc., as a consideration for sale of property of company. 173. Where any company is proposed to be or is in the course of being wound up, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidator of the first-mentioned company may, with the sanction of a special resolution of the company which is being wound up conferring either a general authority on the liquidator, or an authority in respect of any particular arrangement, receive in compensation, or part compensation, for such transfer or sale, shares, policies, or like interests in such other company, for the purpose of distribution amongst the members of the company being wound up; or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from the purchasing company. Any sale made, or arrangement entered into by the liquidators, in pursuance of this section, shall be binding on the members of the company being wound up. — E. § 192 (1, 2); N. S. W. a. (No. 40 of 1899) 261; V. a. (No. 1074) 146; T. a. (33 Vic. No. 22) 189; Q. e. (27 Vic. No. 4) 151; W. A. a. (56 Vic. No. 8) 175; N. Z. 259 (1—3).

Protection of dissentient members. 174. In the case mentioned in the next preceding section, if any member of the company being wound up who has not voted in favor of the special resolution passed by the company of which he is a member at the meeting held for passing the same, expresses his dissent from any such special resolution in writing, addressed to the liquidator, and left at the registered office of the company, not later than seven days after the date of the meeting at which such resolution was passed, such dissentient member may require the liquidator to do one of the following things, as the liquidator may prefer, that is to say—either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member, at a price to be determined in manner herein-after mentioned, such purchase money to be paid before the company is dissolved, and to be raised by the liquidator in such manner as he may think fit. Where there are more liquidators than one, the notice of dissent may be addressed to any of them. — E. § 192 (3, 4); N. S. W. a. (No. 40 of 1899) 261; V. a. (No. 1074) 147; T. a. (33 Vic. No. 22) 189; Q. e. (27 Vic. No. 4) 151; W. A. a. (56 Vic. No. 8) 176; N. Z. 259 (2).

Resolutions not invalidated by winding-up of company. 175. No resolution shall be deemed invalid, for the purposes of the two next preceding sections, by reason that it is passed antecedently to, or concurrently with, any resolution for winding-up the company, or for appointing liquidators. — E. § 192 (5); N. S. W. a. (No. 40 of 1899) 261; V. a. (No. 1074) 148; T. a. (33 Vic. No. 22) 189; Q. e. (27 Vic. No. 4) 151; W. A. a. (56 Vic. No. 8) 177; N. Z. 259 (3).

Mode of determining price. 176. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement, but, if the parties differ about the same, such difference shall be settled by arbitration, and each party shall for the purposes of such arbitration and of the *Arbitration Act, 1891*, be deemed to have entered into a written agreement to submit such difference to the arbitration of two arbitrators, one to be appointed by each party, and the *Arbitration Act, 1891*, shall apply to the case accordingly. — E. § 192 (6); N. S. W. a. (No. 40 of 1899) 262; V. a. (No. 1074) 149; T. a. (33 Vic. No. 22) 190; Q. e. (27 Vic. No. 4) 152; W. A. a. (56 Vic. No. 8) 178; N. Z. 259 (4, 5).

Certain attachments, sequestrations, and executions to be void. 177. Where a company is being wound up, any attachment, sequestration, distress, or execution, put in force against the estate or effects of such company after the commencement of the winding-up, shall be void to all intents. — E. § 211; N. S. W. a. (No. 40 of 1899) 95; V. a. (No. 1074) 150; T. a. (33 Vic. No. 22) 198; Q. e. (27 Vic. No. 4) 164; W. A. a. (56 Vic. No. 8) 179; N. Z. 244 (2).

Fraudulent preference. 178. 1. Any conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property, which would, if made or done by or against any individual person, be deemed in the event of his insolvency to have been made or done by way of undue or fraudulent preference of the creditors of such person shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly. 2. For the purposes of this section, the presentation of a petition for winding up a company shall, in case of a company being wound up under order of the Court, and a resolution for winding up the company shall, in the case of a voluntary winding-up, be deemed to correspond with an act of insolvency in the case of an individual. 3. Any conveyance or assignment made by a company of all its estate and effects to trustees, for the benefit of all its creditors, shall be void to all intents. — E. § 210; N. S. W. a. (No. 40 of 1899) 263, 264; V. a. (No. 1074) 151; T. a. (33 Vic. No. 22) 199; Q. e. (27 Vic. No. 4) 165; W. A. a. (56 Vic. No. 8) 180; N. Z. 246, 247.

Power of Court to assess damages against delinquent directors and officers. 179. Where, in the course of the winding-up under this Act, or under *The Companies Act, 1864*, of any company, it appears that any person who has taken part in the formation or promotion thereof, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained, or become liable or accountable for any moneys or property of the company, or has been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor, member, or contributory of the company, and notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such person, director, manager, liquidator, or other officer, and compel him to repay any moneys, or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company, by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just. — E. § 215; N. S. W. a. (No. 40 of 1899) 162; V. f. (No. 1482) 135; T. c. (59 Vic. No. 19) 13; Q. e. (27 Vic. No. 4) 166; W. A. a. (56 Vic. No. 8) 181; N. Z. 254.

Penalty on falsification of books. 180. If any director, officer, or contributory of any company wound up under this Act destroy, mutilate, alter, or falsify any books, papers, writings, or securities, or make, or be privy to the making of, any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanor, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labor. — E. § 216; N. S. W. a. (No. 40 of 1899) 163; V. a. (No. 1074) 153; T. a. (33 Vic. No. 22) 201; Q. e. (27 Vic. No. 4) 167; W. A. a. (56 Vic. No. 8) 182; N. Z. 255.

Persons signing false statement guilty of misdemeanour. 181. If any statement, abstract, or document or the particulars in any memorandum of association required by this Act are false to the knowledge of any person who signs the same, such person shall be guilty of a misdemeanour, and being convicted thereof, shall be liable at the discretion of the Court to be imprisoned, with or without hard labor, for any term not exceeding three years, or to a penalty not exceeding one hundred pounds. — See notes to § 180, *supra*, and W. A. a. (56 Vic. No. 8) 183.

Prosecution of delinquent directors, etc., in case of winding-up. 182. Where any company is being wound up, if it appear in the course of such winding-up that any past or present director, manager, officer, or member of such company, or any other person has been guilty of any offence in relation to the company, for which he is criminally responsible, the Court may, on the application of the liquidator or any person interested in the winding-up, or of its own motion, direct the liquidator to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses of such prosecution or prosecutions to be paid out of the assets of the company. — E. § 217; N. S. W. a. (No. 40 of 1899) 164; V. a. (No. 1074) 154, 155; T. a. (33 Vic. No. 22) 202, 203; Q. e. (27 Vic. No. 4) 168, 169; W. A. a. (56 Vic. No. 8) 184; N. Z. 256, 257.

Liquidator not to pay money into private account. 183. No liquidator of a company which is being wound up shall pay any sums received by him as liquidator

into his private banking account. — E. § 154; V. f. (No. 1482) 137; T. c. (59 Vic. No. 19) 15; W. A. a. (56 Vic. No. 8) 185.

Appeal to Court against liquidator. 184. If any person is aggrieved by any act or decision of the liquidator of a company which is being wound up under this Act, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just. — E. § 158 (5); V. f. (No. 1482) 145; T. c. (59 Vic. No. 19) 17; W. A. a. (56 Vic. No. 8) 186.

Unclaimed dividends. 185. All dividends not claimed within two years from the declaring thereof, and all unclaimed sums of money remaining in the hands of the liquidator for two years, shall be paid to the Treasurer for the public use of the said Province, and a list thereof filed with the Registrar; but on the order of the Registrar, any unclaimed dividend or other moneys shall be repaid by the Treasurer to the person or persons named in such order. — E. § 224; W. A. a. (56 Vic. No. 8) 187.

Power to enforce orders. 186. All orders made by the Court under this Act may be enforced in like manner to that in which any order of the Supreme Court made in any action pending therein may be enforced. — E. § 178; N. S. W. a. (No. 40 of 1899) 127; V. a. (No. 1074) 158; T. a. (33 Vic. No. 22) 152; Q. e. (27 Vic. No. 4) 116; W. A. a. (56 Vic. No. 8) 188; N. Z. 214.

Member of no-liability company not liable for calls. 187. Nothing contained in this Part of this Act shall have the effect of rendering the member of a no-liability company liable for the payment of any calls. — V. f. (No. 1482) 4; W. A. a. (56 Vic. No. 8) 189; and see note to § 211—220, *infra*.

Rules. 188. 1. The rules in the seventh Schedule hereto shall come into force immediately on this Act coming into operation, and shall remain in force until repealed or modified by rules to be made under sub-section 2 of this section, and when so modified shall remain in force subject to such modification. 2. Any two Judges of the Supreme Court may from time to time make rules regulating and prescribing the winding-up of companies under this Act, the practice of the Court, and the forms of proceedings and notices, and for any purposes similar to those of the rules in the seventh Schedule hereto, and generally for better carrying this Act into effect, and for adding to, modifying, or repealing any such rules, or the rules in the said seventh Schedule. 3. No rules made by Judges under this section shall have any force until confirmed by the Governor and published in the *Government Gazette*. — N. S. W. a. (No. 40 of 1899) 265; V. a. (No. 1074) 157; T. a. (33 Vic. No. 22) 205; Q. e. (27 Vic. No. 4) 171; W. A. a. (56 Vic. No. 8) 190 (2, 3); N. Z. 261.

Part VI. The Winding-up of unregistered Companies.

Winding-up of unregistered companies. 189. Subject as hereinafter mentioned, any partnership, association, or company consisting of more than five members, and not registered under *The Companies Act, 1864*, *The Mining Companies Act, 1881*, or this Act, whether registered under any other Act or not, and hereinafter included under the term “unregistered company”, may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such company, with the following exceptions and additions: I. Where proceedings for winding-up an unregistered company are instituted, the principal place of business of such company shall, for all the purposes of this Act, be deemed to be the registered office of the company; II. No unregistered company shall be wound up under this Act otherwise than by order of the Court; III. The circumstances under which an unregistered company may be wound up by order of the Court are as follows: a) When the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs; b) When the company is unable to pay its debts; c) When the company, by reason of being unable to enforce contribution of capital from its members, or by reason of insufficient capital, or for any other reason, is unable satisfactorily to continue its business; d) When the Court is of opinion that it is just and equitable that the company should be wound up. IV. An unregistered company shall for the purposes of this Act, be deemed unable to pay its debts: a) When a creditor to whom the company is indebted at law or in equity, by assignment or otherwise, in a sum not less than fifty pounds then due, has served on the company by leaving the same at the principal place of business

of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand, under his hand, or if such creditor be a corporation then under its common seal, requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor; b) When any action or other legal proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company or from him in his character of member of the company, and, notice in writing of the institution of such action or other legal proceeding having been served upon the company, by leaving the same at the principal place of business of the company, or by delivering it to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against all costs, damages, and expenses to be incurred by him by reason of the same; c) When execution or other process issued on a judgment, decree, or order obtained in any Court in favor of any creditor, in any proceeding instituted by such creditor against the company, or against any member thereof as such, or against any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied; d) When it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts. — E. § 268; N. S. W. a. (No. 40 of 1899) 84, 86, 94; V. a. (No. 1074) 183; T. c. (59 Vic. No. 19) 20; Q. e. (27 Vic. No. 4) 193, 196; W. A. a. (56 Vic. No. 8) 191; N. Z. 244.

Who to be deemed a contributory in the event of company being wound up.

190. 1. In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or to contribute to the payment of the costs, charges, and expenses of winding up the company, and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid. 2. In the event of the death or the insolvency of any contributory, or the marriage of any female contributory, the provisions of this Act with respect to the representatives of a deceased contributory, and to the trustees of an insolvent contributory, and to the consequences of the marriage of a female contributory, shall apply. — E. § 269; N. S. W. a. (No. 40 of 1899) 80, 81, 82; V. a. (No. 1074) 176 (5), 184; T. c. (59 Vic. No. 19) 21; Q. e. (27 Vic. No. 4) 190 (5), 194; W. A. a. (56 Vic. No. 8) 192; N. Z. 174—176.

Power of Court to restrain further proceedings. **191.** The Court may, at any time after the presentation of a petition for winding up an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action or legal proceeding against any contributory of the company as well as against the company, as by this Act provided, upon such terms as the Court thinks fit. — E. § 270; N. S. W. a. (No. 40 of 1899) 80; V. a. (No. 1074) 177, 185; T. a. (33 Vic. No. 22) 118, c. (59 Vic. No. 19) 22; Q. e. (27 Vic. No. 4) 191, 195; W. A. a. (56 Vic. No. 8) 193; N. Z. 243.

Effect of order for winding-up company. **192.** When an order has been made for winding up an unregistered company, in addition to the provisions in this Act contained in the case of companies formed under this Act, it is hereby further provided that no action or other legal proceeding shall be commenced, or proceeded with, against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose. — E. § 271; N. S. W. a. (No. 40 of 1899) 94; V. a. (No. 1074) 186; T. c. (59 Vic. No. 19) 22; Q. e. (27 Vic. No. 4) 196; W. A. a. (56 Vic. No. 8) 194; N. Z. 244, 290.

Provision in case of unregistered company. **193.** 1. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the order made for winding up such company, or by any subsequent order, direct that all such property, real and personal, including all interest, claims, and rights, into and out of property, real and personal, and including choses in action, as may belong to or be vested in the company, or

to or in any person or persons in trust for or on behalf of the company, or any part of such property is to vest in the official liquidator by his official name, and thereupon the same, or such part thereof as may be specified in the order, shall vest accordingly. 2. The official liquidator may, in his official name, and after giving such indemnity, if any, as the Court directs, bring or defend any actions or other legal proceeding relating to any property vested in him, or any actions, or other legal proceedings necessary to be brought or defended, for the purposes of effectually winding up the company and recovering the property thereof. — E. § 272; N. S. W. a. (No. 40 of 1899) 185; V. a. (No. 1074) 187; T. c. (59 Vic. No. 19) 24; Q. e. (27 Vic. No. 4) 197; W. A. a. (56 Vic. No. 8) 195.

Provisions in this Part of Act cumulative. 194. The provisions made by this Part of this Act with respect to unregistered companies are in addition to, and not in restriction of, any provisions hereinbefore contained with respect to winding up companies by order of the Court; and the Court or official liquidator may, in addition to anything contained in this part of this Act exercise any powers, or do any act, in the case of unregistered companies, which might be exercised or done by it or him in relation to the winding-up of companies formed under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act. — E. § 273; N. S. W. a. (No. 40 of 1899) 98; V. a. (No. 1074) 188; T. c. (59 Vic. No. 19) 25; Q. e. (27 Vic. No. 4) 198; W. A. a. (56 Vic. No. 8) 196.

Part VII. Striking defunct Companies off the Register.

Power of Registrar to strike names of defunct companies off register. 195. 1. Where the Registrar has reasonable cause to believe that a company is not carrying on business, or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation. 2. If the Registrar does not within one month (or, in case the registered office of the company is in the Northern Territory, within six months) of sending the letter receive any answer thereto, he shall, within fourteen days after the expiration of that time, send to the company by post a registered letter, referring to the first letter and stating that no answer thereto has been received by the Registrar, and that if an answer be not received to the second letter within one month (or, in case the registered office of the company is in the Northern Territory, within six months) from the date thereof, a notice will be published in the *Government Gazette* with a view to striking the name of the company off the register. 3. If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within the specified time after sending the second letter receive any answer thereto, the Registrar may publish in the *Government Gazette* and send to the company a notice that at the expiration of three months (or, if the registered office of the company is in the Northern Territory, six months) from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved. 4. At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by such company, strike the name of such company off the register, and shall publish notice thereof in the *Government Gazette*, and on such publication the company whose name is so struck off, shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced, and the company may be wound up, as if the company had not been dissolved. 5. If any company or member of a company feels aggrieved by the name of such company being struck off the register, in pursuance of this section, the company or member may apply to the Court, and the Court, if satisfied that the company was at the time of striking off carrying on business or in operation, and that it is just so to do, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position, as nearly as may be, as if the name of company had never been struck off. 6. A letter or notice authorised or required for the purposes of this section to be sent to a company may be sent by post addressed to the company at its registered office, or, if no office has been registered, addressed to the care of some director or officer of the

company whose name and address are known to the Registrar, or, if there be no director or officer of the company whose name and address are known to the Registrar, the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum. — E. § 242; V. f. (No. 1482) 157—162, j. (No. 1541) 9; W. A. a. (56 Vic. No. 8) 197; N. Z. 266, 267.

Part VIII. Foreign Companies.

Foreign company not to commence or carry on business until provisions of this section complied with. 196. [As amended by b (No. 576) § 2, 5, 9.] A foreign company shall not commence or carry on business in the said Province until the following provisions in this section contained shall have been complied with: I. The company shall, by power of attorney under its common seal, or executed in such manner as to be binding on the company, empower some person in the said Province, either generally or in respect of specified matters, to act as its attorney, and shall by such power of attorney empower the same person to sue and be sued, or otherwise appear or be impleaded in any Court in any civil or criminal proceedings whatsoever, or before any arbitrator or person having by law or consent of parties authority to hear evidence, and generally on behalf of such company, and within the said Province, to do all acts and execute all deeds and other instruments, whether of the nature of deeds or not, relating to the matters within the scope of the powers of the attorney; II. A declaration shall be made by one of the directors, or the general manager or secretary of the company, and indorsed on or annexed to the power of attorney, and shall be to the effect following, that is to say: a) That the company is incorporated in [*naming the country in which it has been incorporated*] under the style mentioned in the power of attorney, in accordance with the law of the country where it is so incorporated; or if the company is not incorporated, then that the company is privileged to sue or be sued, or hold property in the common name mentioned in the power of attorney in accordance with the law of the country where the privileges are conferred; b) That the seal (if any) affixed to the power of attorney is the common seal of the company; and c) That the seal (if any) has been affixed, and the power of attorney executed, and the powers and authorities purporting to be conferred thereby are authorised to be conferred under the constitution or act of incorporation of the company, and its regulations for the time being, and that the person making such declaration is a director, or general manager, or secretary thereof; d) In the event of there being no seal to the power of attorney, that by the law of the country in which the company was incorporated a seal is not necessary to the validity of such power; III. The said declaration shall be made before a notary public, British consul, or other person lawfully authorised to take the same: IV. The attorney so appointed shall deposit in the office of the Registrar the power of attorney with the said declaration indorsed thereon or annexed thereto, and if the company be incorporated evidence of its incorporation pursuant to section 207 of this Act; V. The company shall have an office or place of business in the said Province, where all legal proceedings may be served upon and all notices addressed or given to the company, and the said attorney shall give notice in three consecutive issues of the *Government Gazette* and of two South Australian daily newspapers circulating in Adelaide stating where such office or place of business is situated; [VI. Is added by b (No. 576) § 9, *infra*, g. v.] — E. § 274; N. S. W. c. (No. 22 of 1906) 7; V. f. (No. 1482) 70; T. f. (59 Vic. No. 17) 5; Q. l. (59 Vic. No. 2) 3—7; W. A. a. (56 Vic. No. 8) 198, f. (7 Edw. 7, No. 9) 27; N. Z. 298, 305. — Compliance with the provisions of the *Life Assurance Companies Act, 1882* (No. 277) §§ 25, 26 is deemed to be compliance with the provisions of this section, and conversely. — b. (No. 576) § 8, *infra*. Under *The Companies Act Amendment Act, 1886*, § 8, 10 and 11, it was held that the provisions in respect to the appointment of an attorney were permissive and not compulsory, and therefore could not by construction operate to prohibit a foreign company having no attorney appointed as provided, from carrying on its business, and entering into valid contracts in the Province. — *Picturesque Atlas Publishing Co. v. Campbell*, 24 S. A. L. R. 145. But *cp.* now the phraseology of subsection (1). A corporation created by another province, which is recognized by an act declaring that it shall in the forum be regarded as a corporation may sue as a domestic corporation on a judgment rendered in favor of the original corporation. — *National Bank of Australasia v. Sutherland*, 3 S. A. L. R. 21.

Acts of attorney to be binding on company. 197. Every act or thing done or purporting to be done, and every instrument executed or signed by an attorney

appointed in pursuance of *The Companies Act Amendment Act, 1886*, or of section 196 of this Act on behalf of the company by whom he is appointed, shall, if authorised by the power of attorney, bind the company in the same way and to the same extent and have the same force and effect in every respect as if the same had been done by the company, and as if such instrument had been duly sealed with the common seal of the company, or otherwise executed or signed so as to bind the company. — Cp. N. S. W. c. (No. 22 of 1907) 7; V. f. (No. 1482) 70; T. c. (59 Vic. No. 17) 6; Q. l. (59 Vic. No. 2) 3—7; W. A. a. (56 Vic. No. 8) 199; N. Z. 299.

Acts under power of attorney good till notice filed with Registrar. 198. Every power of attorney granted by a foreign company, a certified copy whereof shall under section 10 of *The Companies Act Amendment Act, 1886*, have been deposited in the office of the Registrar, or which power of attorney shall have been so deposited under section 196 of this Act, shall, so far as is practicable as between the company, its successors, and assigns on the one hand, and any person dealing with the attorney thereby appointed on the other hand, continue in force, notwithstanding the revocation of such power or the winding-up or dissolution of such company, until written notice of such revocation, winding-up, or dissolution, signed by the said attorney, or by an attorney appointed by the company in his place, shall have been filed at the office of the Registrar. — E. § 274; N. S. W. c. (No. 22 of 1906) 11, 13; V. f. (No. 1482) 72, 73; T. c. (59 Vic. No. 17) 7; W. A. a. (56 Vic. No. 8) 200; N. Z. 305, 306.

Proceedings on death or revocation of power of attorney. 199. [As amended by b. (No. 576) § 6.] In the event of the death of any sole or sole surviving attorney, a certified copy of whose power of attorney shall have been deposited in the office of the Registrar under section 10 of *The Companies Act Amendment Act, 1886*, or whose power of attorney shall have been deposited in the office of the Registrar under this Part of this Act, or in the event of the filing under the last preceding section of a notice of revocation of the power of any such attorney, the company shall not, from the expiration of six months after such death or after the filing of such notice, carry on business in the said Province until the provisions of sub-sections I., II., II., and IV. down to and inclusive of the word "thereto" of section 196 shall have been complied with, or again complied with, as the case may be. — T. f. (59 Vic. No. 17) 8; W. A. a. (56 Vic. No. 8) 201.

Notice of change of office. Penalty on attorney not complying. 200. 1. If after notice given under sub-section V. of section 196 of this Act, or section 11 of *The Companies Act Amendment Act, 1886*, of the situation of the office or place of business of the company the situation of the same shall be changed the attorney of the company shall forthwith give notice of such change in three consecutive issues of the *Government Gazette* and of two South Australian daily newspapers published in Adelaide. 2. If any attorney of a foreign company shall fail to comply with the provisions of this section he shall be liable to a penalty of five pounds for every day on which any business of the company is carried on until such provisions are complied with. — N. S. W. c. (No. 22 of 1906) 12; V. f. (No. 1482) 73; T. f. (59 Vic. No. 17) 12, g. (62 Vic. No. 26) 16; Q. l. (59 Vic. No. 2) 8; W. A. a. (56 Vic. No. 8) 202; N. Z. 302 (2, 5).

Penalty on company not complying. Effect of non-compliance. 201. 1. Any foreign company carrying on business contrary to this part of this Act shall be liable to a penalty of twenty pounds for every day on which it shall so carry on business; and any attorney of such company, or any other person, who shall on behalf of such company wilfully and knowingly assist in the carrying on of such business contrary to this Part of this Act, shall incur a penalty of five pounds for every day on which he shall so assist. 2. If any foreign company shall carry on business contrary to this Part of this Act the validity of any contracts, dealings, or transactions in relation to such business shall not be affected by this Part of this Act, but such company shall not be entitled to bring or maintain any action, set-off, counter-claim, or legal proceeding in respect of any such contract, dealing, or transaction until it shall have complied with this Part of this Act. — E. § 274 (5); N. S. W. c. (No. 22 of 1906) 7; V. f. (No. 1482) 70; T. f. (59 Vic. No. 17) 29; W. A. a. (56 Vic. No. 8) 203.

Inspection. 202. Every document deposited or filed with the Registrar under this Part of this Act shall be open to the inspection of any person on payment of one shilling. — N. S. W. c. (No. 22 of 1906) 7 (4); V. f. (No. 1482) 71 (2); T. f. (59 Vic. No. 17) 13; Q. l. (59 Vic. No. 2) 6, 8; W. A. a. (56 Vic. No. 8) 204; N. Z. 300 (2). — Cp. N. S. W. a.

(No. 40 of 1899) 166; V. a. (No. 1074) 19; T. a. (33 Vic. No. 22) 206 (4); Q. e. (27 Vic. No. 4) 172 (5); W. A. a. (56 Vic. No. 8) 204; N. Z. 11.

Service at office good service on company. 203. Service of legal proceedings, or the delivery of any notice at the office or place of business of which notice shall have been given under section 196, sub-section V., of this Act, or under section 11, subsection 1 or 3 of *The Companies Act Amendment Act, 1886*, shall for all purposes be deemed good service on the company; but this section shall not derogate from the effect of any statute or rule now or hereafter in force regulating the service of legal process upon any person or corporate body according to the practice of the Court whence such process shall issue, but shall be deemed to be cumulative upon and in addition to any such statute or rule, nor shall this section affect the power of any Court to direct what service of its process shall be effective as regards any company or corporation. — E. § 116; N. S. W. a. (No. 40 of 1899) 228; V. a. (No. 1074) 63; T. a. [(33 Vic. No. 22)] 68; Q. e. (27 Vic. No. 4) 62; W. A. a. (56 Vic. No. 8) 205; N. Z. 161. — Cp. E. 7 Edw. 7, c. 50, § 35 (2); N. S. W. c. (No. 22 of 1906) 12; V. f. (No. 1482) 74; T. f. (59 Vic. No. 17) 14; Q. l. (59 Vic. No. 2) 9; W. A. a. (56 Vic. No. 8) 205; N. Z. 302. — For procedure in the case of a suit against a foreign company doing business in South Australia, brought under former Acts, see *Bock et al. v. Kingsborough*, 13 S. A. L. R. 59.

Declaration or certified copy evidence. Power of attorney or certified copy receivable in evidence. 204. 1. A declaration complying with the provisions of section 196, sub-section II. and appearing to comply with sub-section III. of the same section, or a copy of such declaration purporting to be certified by the Registrar as a true copy, shall as against the company be final and conclusive evidence, and for all other purposes shall be presumptive evidence, of the facts therein stated in pursuance of the same sub-section. 2. Any power of attorney deposited under the provisions of this Part of this Act, or a copy of such power of attorney purporting to be certified by the Registrar as a true copy, shall for all purposes be receivable in evidence before any Court, person, or tribunal having authority by law to hear and receive evidence, without further proof of the sealing, signature, or other execution thereof. — N. S. W. c. (No. 22 of 1906) 11; V. f. (No. 1482) 72; T. f. (59 Vic. No. 17) 15, g. (62 Vic. No. 26) 10, 15, 19; Q. l. (59 Vic. No. 2) 6, 10; W. A. a. (56 Vic. No. 8) 206, b. (60 Vic. No. 2) 4; N. Z. 303, 308.

Foreign company to give due notice of intention to cease carrying on business. 205. 1. Before any foreign company shall voluntarily cease to carry on business in the Province, at least three months' notice by its attorney of its intention so to do shall be published in three consecutive issues of the *Government Gazette* and of two South Australian daily newspapers circulating in Adelaide. 2. For three months after the last publication of such notice legal proceedings, notices, or other documents may be served on the attorney of the company, or, if there shall be no such attorney, by leaving the same at any office or place of business where the company carried on business prior to the publication of such notice. — N. S. W. c. (No. 22 of 1906) 11, 13; V. f. (No. 1482) 72, 73; T. f. (59 Vic. No. 17) 16; Q. l. (59 Vic. No. 2) 9; W. A. a. (56 Vic. No. 8) 208; N. Z. 307.

Statutory declaration of attorney to be sufficient proof of non-revocation. 206. A statutory declaration made by the attorney of any foreign company, appointed under power of attorney complying with section 196, sub-section I., that he has not received any notice or information of the revocation of the power of attorney or of the winding-up or dissolution of the company, shall as against the company be conclusive proof that no such revocation, winding-up, or dissolution has taken place. — N. S. W. c. (No. 22 of 1906) 11, 13; V. f. (No. 1482) 72, 73; T. f. (59 Vic. No. 17) 17; W. A. a. (56 Vic. No. 8) 209; N. Z. 203.

Evidence of incorporation of company. 207. 1. A certificate of incorporation purporting to be under the hand of an officer authorised by the law of the country in which a foreign company purports to be incorporated, to grant such certificate, duly certified by declaration made, or purporting to be made, by one of the directors or the general manager or secretary of such company, before a notary public, or British consul, or other person lawfully authorised to take such declaration, shall as against the company be conclusive evidence, and for all other purposes be presumptive evidence, that such company has been duly incorporated. 2. The date of incorporation mentioned in such certificate, or in such declaration, or if no such date be mentioned then the date of such certificate, or the date of such declaration as aforesaid, shall be deemed to be the date at which such company was incorporated. 3. In the absence of a certificate of incorporation a copy of any act of incorporation

or document of similar effect to a certificate of incorporation, under which the company purports to be incorporated, duly certified as by sub-section 1 of this section provided with regard to a certificate of incorporation, shall be equivalent to a certificate of incorporation under the same sub-section. — N. S. W. c. (No. 22 of 1906) 11; V. f. (No. 1482) 72; T. f. (59 Vic. No. 17) 18; Q. l. (59 Vic. No. 2) 6, 107; W. A. a. (56 Vic. No. 8) 210; N. Z. 308.

Act not to authorise issue of bank or promissory notes or affect implied responsibility. 208. Nothing in this Part of this Act contained shall be construed to authorise any foreign company to issue notes, or promissory notes, payable on demand, within the Province, or shall do away with or diminish the responsibility of the company apart from this Part of this Act by reason of implied authority or otherwise for any act or thing done or omitted to be done by its attorney or agent. — W. A. a. (56 Vic. No. 8) 211; N. Z. 309.

One year for company incorporated in Great Britain or Ireland. 209. Any foreign company incorporated in Great Britain or Ireland, and carrying on business in the said Province at the commencement of this Act, need not comply with any of the provisions of this Part of this Act until one year from such commencement. — T. f. (59 Vic. No. 17) 24; W. A. a. (56 Vic. No. 8) 212.

Provision where company has complied with Companies Amendment Act, 1886. 210. 1. [As amended by b. (No. 576) § 7.] A foreign company which has complied with sections 8 and 10 of *The Companies Act Amendment Act, 1886*, need not, subject, however, to section 199 of this Act, comply with sub-sections I., II., III., and IV. of section 196 of this Act, except as regards the deposit in the office of the Registrar of evidence of the incorporation of the company. 2. The attorney of a foreign company which has complied with sub-sections 1, 2, and 3, of section 11 of *The Companies Act Amendment Act, 1886*, need not give notice under sub-section V. of section 196 of this Act. — Cp. W. A. a. (56 Vic. No. 8) 212.

Part IX. No-Liability Companies. Calls.

Calls and notice thereof. 211. The calls upon shares in every company shall be made payable on the second Wednesday in a month and on that day only, such day not to be less than seven days from the day on which the call shall be made. A notice shall be printed on the face of each company's scrip, stating that that day is the day on which calls are payable. When a call has been made, notice of the day when it will be payable, and of the place for payment thereof, shall be published in the *Government Gazette*, in a daily newspaper published in Adelaide, and in case the registered office shall be in any place other than Adelaide, in one or more newspapers circulating in the locality wherein the registered office of the company shall be situated. — V. f. (No. 1482) 8; W. A. a. (56 Vic. No. 8) 213. — No-liability companies may be organized, but only for mining purposes, in New South Wales, Tasmania, Queensland and New Zealand. See N. S. W. (No. 40 of 1899) § 186—224; T. (48 Vic. 15) § 117—122; Q. (50 Vic. 19) 9—11; N. Z. 340—371.

No call to be made until fourteen days after previous call payable. 212. When a call shall have been made as provided in the last preceding section, no subsequent call shall be made until fourteen days from the day when the call so made is payable. — V. f. (No. 1482) 9; W. A. a. (56 Vic. No. 8) 214.

Forfeiture of shares for non-payment of calls. 213. Any share in a company upon which a call remains unpaid for fourteen days after the day upon which such call is payable, shall be absolutely forfeited without any resolution of the directors or other proceeding. — V. f. (No. 1482) 10 (1); W. A. a. (56 Vic. No. 8) 215. — Where the articles of association of a company provided that if calls were not paid within a certain time after notice the shares in respect of which such calls were made should be absolutely forfeited, it was held that the shares were not absolutely forfeited, but that the forfeiture was at the discretion of the directors. — *Potosi Mining Co., Ltd. v. O'Halloran*, 4 S. A. L. R. 87.

Forfeited shares to be sold by auction. 214. 1. Every such forfeited share shall be offered for sale by the company by public auction, notice of which shall be advertised in the *Government Gazette*, and in a daily newspaper published in Adelaide, and, in case such company shall have a registered office in any place other than Adelaide, then in one newspaper circulating in the locality wherein the registered office of the company is situated, not less than seven nor more than fourteen days before the day appointed for the sale. 2. The proceeds of such sale shall be applied in payment of the expense of such advertisement, and any other expenses necessarily incurred in respect of the forfeiture, and in payment of the call due, and the balance

(if any) shall be paid to the member whose share shall have been so sold on his delivering to the company the scrip representing such forfeited share. — V. f. (No. 1482) 10 (2); W. A. a. (56 Vic. No. 8) 216.

Redemption of forfeited shares. 215. Notwithstanding anything hereinbefore contained, the owner at law or in equity of a forfeited share shall be entitled, at any time before the day fixed for sale of the share, to redeem the share by payment to the secretary of all calls due thereon, and of all expenses incurred by the company in respect of the forfeiture, and he shall thereupon be entitled to the share as if the forfeiture had not been incurred. — V. f. (No. 1482) 15; W. A. a. (56 Vic. No. 8) 217.

Forfeited shares which are not sold to become the absolute property of the company. 216. Whenever, at any public auction called for the sale of forfeited shares in any company, there shall have been or shall be no bid for the purchase of such shares, or no bid sufficient to cover the call or calls then unpaid upon such shares, and the expenses of and attending the forfeiture and attempted sale, such shares shall become the absolute property of the company, and may be dealt with in any manner that the directors may think advisable for the benefit of the company. — Cp. V. f. (No. 1482) 12; W. A. a. (56 Vic. No. 8) 218.

Minute of forfeiture to be conclusive evidence. 217. A minute in the books of a company signed by the chairman of directors for the time being that any shares were offered for sale by public auction, and that there was no sufficient bid to pay the arrears of calls then due thereon, and the expenses of and attending the forfeiture and attempted sale, shall be conclusive evidence that such shares became the absolute property of the company on the day when they were offered for sale, and that the previous owners of such shares have forfeited all claim to or in respect of the same. — W. A. a. (56 Vic. No. 8) 219.

Power to issue new scrip. 218. Whenever any forfeited shares shall have been sold at public auction, or shall have become the property of the company, the directors may issue new scrip certificates in respect of such shares, which shall bear upon the face thereof the words "Issued in lieu of forfeited share-scrip". — W. A. a. (56 Vic. No. 8) 220.

Shareholder not liable to calls or contributions. 219. The acceptance of a share in a company, whether by original allotment or by transfer, shall not be deemed a contract on the part of the person accepting the same to pay any calls in liquidation or otherwise in respect thereof, or any contribution to the debts and liabilities of such company, and such person shall not be liable to be sued for any such calls or contributions; but he shall not be entitled to a dividend upon any share upon which a call shall be due and unpaid. — V. f. (No. 1482) 5; W. A. a. (56 Vic. No. 8) 221. — In the liquidation of a no-liability company the surplus assets after payment of the debts and liabilities are to be applied in the repayment of the capital contributed and the residue is to be divided between the shareholders in proportion to the number of shares held by them, irrespective of the fact that a greater sum may have been paid up on some shares than on others. — In re Royal Mint & Iron King G. M. Co., (1900) S. A. L. R. 58. — A provision in the articles of association that on the winding-up of a no-liability company the surplus assets should be distributed among the members in proportion to the number of shares held by them, without regard to the amount paid up, and that no deduction should be made of any amount for the repayment of paid up capital is valid, and the holders of discount shares are entitled to share in the surplus assets without paying up amount of discount. — In re Ivanhoe, etc., G. M. Co., (1900) S. A. L. R. 53. — For a case involving the application of these principles to mining companies incorporated under The Mining Companies Act, 1881, see In re Fraser's South G. M. Co., (1900) S. A. L. R. 56.

This Part of the Act to apply only to no-liability companies. 220. This Part of this Act shall only apply to no-liability companies registered under this Act.

Part X. The Liability of Directors and Promoters.

Liability for statements in prospectus. 221. 1. Every prospectus of a company, or intended company, and every notice inviting persons to subscribe for shares in any company or intended company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the company or intended company or otherwise, and the number of paid-up or partly paid-up shares held or to be taken by any promoter, and every other interest

of such promoter or any person in trust for him, in the said company or intended company, and any prospectus or notice not containing the particulars aforesaid shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same as regards any person taking shares in such company on the faith of such prospectus, unless he shall have had notice of such contract, shares, or interest. 2. Where, after the passing of this Act, a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company, every person who is a director or provisional director of the company at the time of the issue of the prospectus or notice, and every person who, having authorised such naming of him, is named in the prospectus or notice as a director or provisional director of the company, or as having agreed to become a director of the company, either immediately or after an interval of time, and every promoter of the company and every person who has authorised the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures, or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue or misleading statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved: a) With respect to every such untrue or misleading statement, not purporting to be made on the authority of an expert or of a public official document or statement, that he had reasonable ground to believe, and did, up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe that the statement was true; and b) With respect to every such untrue or misleading statement, purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation: Provided that, not withstanding that such untrue or misleading statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation, such director, provisional director, person named, promoter, or other person who authorised the issue of the prospectus or notice as aforesaid shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and c) With respect to every such untrue or misleading statement, purporting to be a statement made by an official person, or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document: Or unless it is proved: I. That, having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent; or II. That the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent; or III. That, after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue or misleading statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given. 3. A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing the untrue or misleading statement, but shall not include nor shall this section apply to any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company. 4. Where any company existing at the commencement of *The Directors and Promoters Liability Act, 1890*, which has, before such commencement, issued shares, debentures, or debenture stock, shall be desirous of obtaining further capital by subscription for shares, debentures, or debenture stock, and for that purpose shall issue a prospectus or notice, no director of such company shall be liable in respect of any statement therein unless he shall have authorised the issue of such prospectus or notice, or have adopted or ratified the same. 5. In this section the word "expert" includes any person whose profession gives authority to a statement made by him. — E. §§ 80, 81, 84; N. S. W. a. (No. 40 of 1899) 66; V. f. (No. 1482) 104—110, 118; T. a. (33 Vic. No. 22) 21; Q. f. (53 Vic. No. 18) 31, g. (55 Vic.

No. 10) 6; W. A. a. (56 Vic. No. 8) 222; N. Z. 75,76. — In an action of deceit against the promoters the plaintiff must prove actual fraud, that the fraud was an inducing cause of the contract, and that actual damage was sustained. It is not sufficient to show that the prospectus failed to set out the fact that some of the promoters received fully paid-up shares as remuneration for their services and the use of their names from another of the promoters who was entitled to such fully paid-up shares as stated in the prospectus. — *Ingham v. Hardy*, 19 S. A. L. R. 64.

Indemnity where name of person has been improperly inserted as a director. 222. Where any such prospectus or notice as aforesaid contains the name of a person as a director, provisional director, or promoter of the company, or as having agreed to become a director, provisional director, or promoter thereof, and such person has not consented to become a director, provisional director, or promoter, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors, provisional directors, or promoters of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice, shall be liable to indemnify the person named as a director, provisional director, or promoter of the company, or as having agreed to become a director, provisional director, or promoter thereof as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceeding brought against him in respect thereof. — E. § 84 (3); V. f. (No. 1482) 111; T. c. (59 Vic. No. 19) 30; Q. g. (55 Vic. No. 10) 7; W. A. a. (56 Vic. No. 8) 223; N. Z. 77.

Contribution from co-directors, etc. 223. Every person who, by reason of his being a director, provisional director, or promoter, or named as a director, provisional director, or promoter, or as having agreed to become a director, provisional director, or promoter, or by reason of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment. — E. § 84 (4); V. f. (No. 1482) 120; T. c. (59 Vic. No. 19) 31; Q. g. (55 Vic. No. 10) 8; W. A. a. (56 Vic. No. 8) 224; N. Z. 78.

Copies of prospectus to be filed with Registrar. 224. 1. Every registered company shall, within one week after issuing any prospectus or notice announcing for subscription, or containing an invitation to subscribe for any shares, debentures, or debenture stock of the company, send to the Registrar, to be kept by him, a copy of the prospectus or notice signed by all the directors and by the secretary of the company. 2. If any such prospectus or notice is issued on behalf of, or with reference to, an intended company before the registration thereof, a copy of the prospectus or notice shall, on the application for the registration of the company, be produced to the Registrar, to be kept by him. 3. If default is made in complying with this section, every person who is a director or promoter of the company at the time when the default is made, and knowingly authorises or permits such default, shall be liable to a fine not exceeding ten pounds for every day during which the default continues. — E. § 80; V. f. (No. 1482) 103; W. A. a. (56 Vic. No. 8) 225.

Liability of directors of no-liability company for wages. 225. The directors of every no-liability company, jointly and severally, shall be personally liable for the payment of wages for not exceeding four weeks owing by such company; and such wages shall be recoverable from such directors in any manner in which wages are ordinarily recoverable.

Part XI. Miscellaneous.

Restriction on allotment of shares and debentures. 226. Where an allotment of shares, debentures, or debenture stock in a registered or intended company is made in pursuance of any prospectus or notice issued after the commencement of this Act, the allotment shall not be binding on the applicant, unless: a) The minimum number stated in that behalf in the prospectus or notice as a condition of allotment or of the formation of the company, or, if no minimum number is so stated, the whole number of shares or debentures offered by the prospectus or notice have been applied for at the time of the allotment; b) The minimum amount stated in that behalf in the prospectus or notice as a condition of allotment or of the formation of the company, or, if no minimum amount is so stated, then one-tenth of the amount

payable in cash in respect of each share, debenture, or debenture stock so applied for, has been paid at the time of the allotment; and c) The allotment is made within three months from the day on which the application for such shares was left with company, or the promoters of the intended company, or some person acting on their behalf. — E. § 85; V. f. (No. 1482) 58; W. A. a. (56 Vic. No. 8) 226; N. Z. 95.

Assignment equivalent to insolvency. 227. For the purposes of this Act, and so far as practicable, any person who shall make an assignment for the benefit of his creditors under *The Insolvent Act, 1886*, or any other Act for the time being in force in that behalf, shall be deemed to have become insolvent, and the provisions of this Act with respect to insolvency and the trustee of an insolvent shall, so far as practicable, apply to such assignment and the trustee thereof. — Cp. N. S. W. (No. 40 of 1899) 263, 264; Q. h. (56 Vic. No. 24) 21; W. A. a. (56 Vic. No. 8) 227.

Liability of secretary neglecting to lodge books with liquidator. 228. Any secretary of a company who shall, after having been lawfully directed so to do, wilfully neglect or refuse to lodge with the liquidator the register of members of a company which is being wound up, and all other books, documents, and other property of such company in his possession or under his control, shall be liable to a penalty not exceeding one hundred pounds for every such offence. — E. §§ 147, 174; V. f. (No. 1482) 131; T. c. (59 Vic. No. 19) 11; W. A. a. (56 Vic. No. 8) 228.

Liability of secretary to penalties. 229. Any such secretary or any director of a company who shall wilfully refuse or neglect to permit any person to inspect, or wilfully obstruct any person in inspecting, any book or account of a company, or report of directors thereof, or other document, to the inspection of which such person shall be entitled under this Act, shall be liable to a penalty of fifty pounds: Provided such person shall have paid or tendered the sum (if any) payable by him for such inspection. — E. §§ 30, 100, 101, 110; N. S. W. (No. 40 of 1899) 239 (3—5), 243, 254; V. a. (No. 1074) 33, 43, 59, f. (No. 1482) 131 (5); T. a. (33 Vic. No. 22) 34, 47, 64; Q. e. (27 Vic. No. 4) 31, 42, 58; W. A. a. (56 Vic. No. 8) 229; N. Z. 104, 129, 143.

Notice to be given to director on his election that his liability will be unlimited. 230. 1. In any limited company in which in pursuance of this Act the liability of a director or manager is unlimited, the directors or manager of the company (if any), and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, manager, and secretary (if any) of such company, or one of them, shall, before such person accept such office, or acts therein, give him notice in writing that his liability will be unlimited. 2. If any director, manager, secretary, or proposer make default in adding such statement, or if any promoter, director, manager, or secretary make default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds, and shall also be liable for any damage which the person so elected or appointed may sustain from such default; but the liability of the person elected or appointed shall not be affected by such default. — E. § 60; N. S. W. a. (No. 40 of 1899) 37; W. A. a. (56 Vic. No. 8) 230; N. Z. 83.

Court to bring certain cases under notice of Attorney-General. 231. It shall be the duty of the Court, in case at any time it has reason to believe that any of the offences mentioned in this Part of this Act has been committed, to bring the case under the notice of the Attorney-General with a view to a prosecution being instituted. — W. A. a. (56 Vic. No. 8) 231.

Penalty on perjury. 232. If any person, upon examination upon oath or affirmation authorised under this Act, or in any affidavit, deposition, declaration, or solemn affirmation in or about the winding-up of any company under this Act, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, or makes a false statement, he shall, upon conviction, be liable to the penalties of wilful perjury. — E. § 218; V. a. (No. 1074) 156; T. a. (33 Vic. No. 22) 204; Q. e. (27 Vic. No. 4) 170; W. A. a. (56 Vic. No. 8) 232.

Penalties on persons committing forgery. 233. Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share certificate or coupon, or any document purporting to be a share certificate or coupon issued in pursuance of this Act, or demands, or endeavors to obtain or receive any share or interest of or in any company or any dividend or money payable in respect thereof by virtue of any such forged or altered share certificate,

coupon, or document purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable to the like punishment as if he had been convicted of forgery. — E. § 38 (1); N. S. W. a. (No. 40 of 1899) 63; W. A. a. (56 Vic. No. 8) 233.

Penalties on persons falsely personating owner of shares. 234. Whosoever falsely and deceitfully personates any owner of any share or interest of or in any company, or of any share certificate or coupon issued in pursuance of this Act, and thereby obtains or endeavors to obtain any such share or interest or share certificate or coupon, or receives or endeavors to receive any money due to any such owner as if such offender were the true and lawful owner, shall be guilty of felony, and being convicted thereof shall be liable to like punishment as if he had been convicted of obtaining money under a false pretence. — E. § 38 (1); N. S. W. a. (No. 40 of 1899) 64; W. A. a. (56 Vic. No. 8) 234.

Penalties on persons engraving plates, etc. 235. Whoever, without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone, or other material any share certificate, or coupon, purporting to be a share certificate or coupon issued or made by any particular company, under and in pursuance of this Act, or to be a blank share certificate or coupon, issued or made as aforesaid, or to be a part of such a share certificate or coupon, or uses any such plate, wood, stone, or other material for the making or printing any such share certificate or coupon, or any such blank share certificate or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, shall be guilty of felony, and being convicted thereof shall be liable to the like punishment as if he had been convicted of forgery. — E. § 38 (2); N. S. W. a. (No. 40 of 1899) 65; W. A. a. (56 Vic. No. 8) 235.

Reception of certified copies of documents as legal evidence. 236. Every certificate of the incorporation of any company, given by the Registrar for the time being under his hand and seal, shall be received in evidence as if it were the original certificate, and any copy of or extract from any of the documents or part of the documents kept and registered at the registration office, if duly certified to be a true copy under the hand and seal of the Registrar, shall in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document, without proof of the appointment of the Registrar. — E. § 17; N. S. W. a. (No. 40 of 1899) 17; V. f. (No. 1482) 52 (1); T. c. (59 Vic. No. 19) 27; W. A. a. (56 Vic. No. 8) 236; N. Z. 12.

Certified copy of articles of company to be *prima facie* evidence. 237. Any document appearing to be certified by some person as secretary or manager of any incorporated company as a true copy of, or extract from, any memorandum or articles of association, or rules or regulations of such company, shall in all Courts be received as *prima facie* evidence of the contents of the instrument of or from which it appears to be a copy or extract. — See notes to § 236, *supra*; W. A. a. (56 Vic. No. 8) 237.

Scrap certificate to be *prima facie* evidence. 238. Any document appearing on its face to be a certificate or memorandum of the title or ownership of any shares in any incorporated company, and lawfully issued pursuant to the memorandum or articles of association, or rules or regulations of such company, shall in all Courts be received as *prima facie* evidence of the title or ownership stated in such document. — E. § 23; cp. note to § 32, *supra*.

Declaration. 239. Every declaration required by this Act, or intended to be used in any matter or proceeding under this Act, may be made before a notary public, justice of the peace, or commissioner for taking affidavits in the Supreme Court, or out of the said Province, before any person authorised to take declarations in the place where such declaration shall be made, and it shall be sufficient if such declaration purports to be made under or in pursuance of this Act.

Notices and legal proceedings.

Service of notices on company. 240. Any summons, notice, order, or other document, requiring to be served upon any company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company at its registered office. — E. § 116; N. S. W. a. (No. 40 of 1899) 228; V. a. (No. 1074) 63; T. a. (33 Vic. No. 22) 68; Q. e. (27 Vic. No. 4) 62; W. A. a. (56 Vic. No. 8) 240; N. Z. 151.

Rules as to notices by letter. 241. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and in proving service of such document it shall be sufficient to prove that such document was properly directed, and that it was posted as a prepaid letter. — N. S. W. a. (No. 40 of 1899) 229; V. a. (No. 1074) 64; T. a. (33 Vic. No. 22) 69; Q. e. (27 Vic. No. 4) 63; W. A. a. (56 Vic. No. 8) 241; N. Z. 152.

Authentication of notices of company. 242. Any summons, notice, order, or proceeding requiring authentication by a company may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company, and the same may be in writing or in print, or partly in writing and partly in print. — E. § 117; N. S. W. a. (No. 40 of 1899) 230; V. a. (No. 1074) 65; T. a. (33 Vic. No. 22) 70; Q. e. (27 Vic. No. 4) 64; W. A. a. (56 Vic. No. 8) 242; N. Z. 153.

Court or Judge may order service on officer, manager, or agent of corporations, etc., to be good. 243. 1. In any proceeding in the Supreme or any other Court against any corporation or incorporated company, including a foreign company, the said Court, or any Judge or Special Magistrate having jurisdiction in interlocutory proceedings in such Court, may order that service of any process or notice, and of all subsequent process and notices in such proceeding upon any officer, manager, or agent of such corporation or incorporated company, shall be deemed good and effectual service upon such corporation or incorporated company, under such terms and conditions as to such Court or Judge shall seem fit. 2. Such further proceedings may be had upon a service made under such order as might be taken against an individual resident in the said province liable to such proceeding, and duly served with such process or notice. 3. The said Court, or any such Judge or Special Magistrate, upon application made by such corporation or incorporated company, or such officer, manager, or agent, may revoke, vary, or alter such order, and may order by whom the costs arising from such application shall be paid. 4. Nothing in this section contained shall derogate from any power which any Court, Judge, or Special Magistrate now has of directing effective service of any process or notice upon corporation or incorporated company, or any power which any person now has of proceeding against the same.

Proceedings for penalties. 244. All offences against this Act, or against any regulation made under this Act, in respect of which offences any fine or penalty is by this Act imposed (where no other provision for the recovery thereof is in that behalf made), shall be heard and determined, and such fines and penalties be awarded and imposed in a summary way, by and before any two or more justices of the peace for the said Province. — N. S. W. a. (No. 40 of 1899) 258; V. f. (No. 1482) 173 (1); T. a. (33 Vic. No. 22) 71; Q. e. (27 Vic. No. 4) 65; W. A. a. (56 Vic. No. 8) 244, 245, 246; N. Z. 158.

Proceedings before Justices. 245. All the proceedings before Justices shall be regulated by Ordinance No. 6 of 1850, *The Justices Procedure Amendment Act*, 298 of 1883/4, and any other Act that may be law in that behalf. — See notes to § 244, *supra*.

On non-payment of penalty, etc., justice may imprison. 246. In every case of the adjudication of a fine or pecuniary penalty or amends under this Act, and of the non-payment of such fine or pecuniary penalty or amends, any Justice may commit the offender or person making default in payment to any gaol in the said Province for any term not exceeding twelve months, the imprisonment to cease on payment of the sum due and the costs of such proceedings as may have been taken for the recovery thereof. — See notes to § 244, *supra*.

Appeal to Local Court from order by justices. 247. There shall be an appeal from any order of justices made under the provisions herein contained, and from any conviction by justices for any offence against this Act, and from any order dismissing any information or complaint under this Act, and from any other order or adjudication whatsoever by justices under this Act, which appeal shall be to the Local Court of Adelaide of Full Jurisdiction only, and the proceedings in such appeal shall be conducted in manner appointed by the said Ordinance No. 6 of 1850, and the Act No. 298 of 1883/4, for appeals to Local Courts, but the Local Court of Adelaide aforesaid may make such order as to payment of the costs of such appeal as the Court shall think fit. — E. § 181; N. S. W. a. (No. 40 of 1899) 128; T. a. (33 Vic. No. 22) 152; Q. e. (27 Vic. No. 4) 117; W. A. a. (56 Vic. No. 8) 247; N. Z. 215.

Local Court may, on appeal, state case for opinion of Supreme Court. 248. The Local Court, upon the hearing of any appeal under the last preceding section, may state one or more special case or cases for the opinion of the Supreme Court, and the Supreme Court shall hear and decide such special case or cases according to the practice of the Supreme Court on special cases; and the Supreme Court shall make such order as to the costs of any such special case as to the said Court shall appear just; and any justice or justices, or the Local Court of Adelaide, shall make an order in respect to the matters referred to the Supreme Court in conformity with the certificate of the said Supreme Court, or of any Judge thereof, which order of the justice, or justices, or Local Court, shall be enforced in manner provided by this Act; or otherwise for the enforcement of orders of justices; and, save as herein or in *The Justices Procedure Amendment Act, 1883/4*, or any other Act for the time being in force in that behalf, provided, no order or proceeding of justices, or of any Local Court, made under the authority of this Act shall be appealed against, or removed by *certiorari* or otherwise into the Supreme Court of the said Province. — See notes to § 247, *supra*, and W. A. a. (56 Vic. No. 8) 248.

Justices may make direction as to costs. 249. The justices imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person upon whose information or at whose suit such penalty has been recovered; and, subject to such direction, all penalties shall be paid to the Treasurer, for the public uses of the Province. — E. §§ 278, 279; N. S. W. a. (No. 40 of 1899) 259; V. a. (No. 1074) 66, 68; T. a. (33 Vic. No. 22) 72, 74; Q. e. (27 Vic. No. 4) 66, 68; W. A. a. (56 Vic. No. 8) 250; N. Z. 155.

Fees payable to Registrar. 250. The fees set forth in the third and fourth Schedules hereto shall be payable to the Registrar in respect of the several matters therein mentioned. The Governor may by Proclamation in the *Government Gazette* fix fees to be paid to the Registrar for matters not mentioned in such Schedule, and may in like manner abolish or vary such fees. — E. § 244; N. S. W. a. (No. 40 of 1899) 166, 179; V. a. (No. 1074) 17; T. a. (33 Vic. No. 22) 17; Q. e. (27 Vic. No. 4) 172 (4); W. A. a. (56 Vic. No. 8) 249; N. Z. 8—10.

Schedules.

First Schedule.

No. of Act.	Title.
<i>First Part.</i>	
24 of 1859.	An Act to facilitate proceedings by and against Incorporated Companies
13 of 1864.	An Act for the Incorporation, Regulation, and Winding up of Trading Companies and other Associations
93 of 1878.	An Act to amend the Act No. 22 of 1870-71, intituled "An Act to amend the Companies Act, 1864"
289 of 1883.	An Act to further amend "The Companies Act, 1864"
375 of 1886.	An Act to amend "The Companies Act, 1864"
487 of 1890.	An Act to amend the law relating to the Liability of Directors and Promoters of Companies
<i>Second Part.</i>	
22 of 1870-71.	An Act to amend "The Companies Act, 1864"
204 of 1881.	An Act for the Incorporation and Winding-up of Mining Companies
218 of 1881.	An Act to amend "The Mining Companies Act, 1881"
256 of 1882.	An Act to amend "The Mining Companies Act, 1881"
396 of 1887.	An Act to further amend "The Mining Companies Act, 1881"
408 of 1887.	An Act to amend "The Companies Act Amendment Act, 1870-71"

Second Schedule.

Table A. Regulations for Management of a Limited Company.

Shares.

1. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

2. Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon.

3. If such certificate is worn out or lost, it may be renewed on payment of one shilling, or such less sum as the company in general meeting may prescribe.

Allotment of shares.

4. The directors may allot and issue the shares of the company not already taken up in such manner as they shall deem advisable in the interests of the company. Any shares may be issued if the company in general meeting think fit, with a fixed or preferential dividend, or any other special privileges or advantages which may seem expedient.

5. Any shares may, if the directors think it advisable, be issued at such premium as the directors may think fit, whether such shares shall or shall not have been previously forfeited.

Calls on shares.

6. The directors may, from time to time, make such calls as they think fit, upon the members in respect of all moneys unpaid on their shares and not by the conditions of allotment made payable at fixed times, provided that fourteen days' notice, at least, be given of each call. Each member shall be liable to pay the amount of call so made at the registered office of the company at the time appointed by the directors. A call may be made payable by instalments.

7. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

7A. On the trial or hearing of any action by the company against any member to recover any debt due for any call, it shall be sufficient to prove that the name of the member sued is on the register of members as the holder, on¹⁾ one of the holders, of the number of shares in respect of which such debt accrued, and that notice of such call was given in pursuance of the company's regulations, and it shall not be necessary to prove the appointment of the directors who made such call, nor that a quorum of directors was present at the board when such call was made, nor that the meeting at which such call was made was duly convened or constituted, nor any other matter whatsoever, but proof of the matters first above mentioned shall be conclusive evidence of the debt.

8. If the call payable in respect of any share is not paid on or before the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of eight pounds per centum per annum from the day appointed for the payment thereof to the time of the actual payment.

9. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys due upon the shares held by him beyond the sums actually called for, and upon the moneys so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfer of shares.

10. The instrument of transfer of any share in the company shall be executed both by the transferor and the transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

11. Shares in the company shall be transferred in the following form, or in a form to the like effect: I, A.B., of _____, in consideration of the sum of _____ paid to me by C.D., of _____, do hereby transfer to the said C.D. the share [or shares] numbered _____, standing in my name in the books of the _____ Company, Limited, to hold unto the said C.D., his executors, administrators, and assigns, subject to the several conditions on which I hold the same at the time of the execution hereof; and I, the said C.D., do hereby agree to take the said share [or shares] subject to the same conditions. As witness our hands the _____ day of _____, 18 ____.

12. The company may decline to register any transfer of shares upon which any call shall be due.

13. The transfer books shall be closed during the fourteen days immediately preceding each ordinary general meeting.

Transmission of shares.

14. The representative of a deceased member shall be the only person recognised by the company as having any title to his share.

15. Any person becoming entitled to a share in consequence of the death or insolvency of any member may be registered as a member upon such evidence being produced as may from time to time be required by the company.

16. Any person who has become entitled to a share in consequence of the death or insolvency of any member may, instead of being himself registered, elect to have some person to be named by him registered as a transferee of such share.

17. The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

18. The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor, and thereupon the company shall register the transferee as a member.

¹⁾ *Sic*; obviously "or"

Forfeiture of shares.

19. If any member fail to pay any call or instalment on or before the day appointed for payment thereof, and for fourteen days thereafter, the directors may, while the call or instalment remains unpaid, serve a notice on him requiring him to pay the same, together with any interest and expenses that may have accrued by reason of such non-payment.

20. The notice shall name a further day on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. The notice shall also state that, in the event of non-payment at or before the time appointed, the shares in respect of which such call was made, will be forfeited.

21. If the requisitions of the notice are not complied with, any share in respect of which such notice has been given may at any time thereafter before payment of all calls or instalments, interest and expenses, due in respect thereof has been made, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends in respect of the forfeited shares, not actually paid before the forfeiture. When any share shall have been so forfeited, notice of the resolution shall be given to the member in whose name it stood prior to the forfeiture, and an entry of the forfeiture, with the date thereof, shall forthwith be made in the register.

22. Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the directors, subject to the control of the company in general meeting, think fit.

23. Any member whose shares have been forfeited shall, notwithstanding, be liable to pay to the company all calls owing upon such shares at the time of the forfeiture.

24. A declaration in writing under *The Companies Act, 1892*, that the call in respect of a share was made and notice thereof given and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share; and such declaration, and the receipt of the company for the price of such share, shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share, discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of shares into stock.

25. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock.

26. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

27. The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock, and such interests shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not if existing in shares have conferred such privileges or advantages.

Increase in capital.

28. The directors may, with the sanction of a special resolution of the company, increase its capital by the issue of new shares, such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction be given, as the directors think expedient.

29. Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer if not accepted will be deemed to be declined. After the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

30. Any capital raised by the creation of new shares shall be considered as a part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls or otherwise, as if it had been part of the original capital.

General meetings.

31. The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place as the directors may determine.

32. Subsequent general meetings shall be held once at least in every six months, at such time and place as may be prescribed by the company in general meeting, and if no other time

or place is prescribed, a general meeting shall be held on the first Monday in February and August respectively in every year, at such place as may be determined by the directors.

33. The above-mentioned general meetings shall be called ordinary meetings; all other meetings shall be called extraordinary.

34. The directors may, whenever they may think fit, and they shall, upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting.

35. Every requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

36. Upon receipt of such requisition, the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date when the requisition was left at the registered office of the company, the requisitionists, or any members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at general meetings.

37. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner by advertisement or otherwise, as may be prescribed by the company in general meeting, but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

38. All business shall be deemed special that is transacted at an extraordinary meeting, and also all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts and balance-sheets, and the ordinary report of the directors.

39. No business shall be transacted at any general meeting except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business, and such quorum shall be ascertained as follows: If the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every ten additional members, but no quorum shall in any case exceed twenty.

40. If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum is not present it shall be adjourned *sine die*.

41. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

42. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman.

43. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

44. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the minute-book of the proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favor of or against such resolution.

45. If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

46. Minutes of the proceedings at every general meeting shall be entered and kept in a book, and the minutes so entered shall be signed in the said book by the chairman of the meeting, or in the case of his refusing to sign the same, or neglecting to do so for fourteen days after the meeting, then such minutes may be signed by any two members entitled to vote and be present, and who were actually present at the meeting; and the said book when so signed shall be conclusive evidence that the proceedings minuted therein, and purporting to be signed as aforesaid, were regular, and actually took place as minuted at a meeting duly convened and held, and shall be binding on all the members of the company, except as to any irregular proceedings which may be annulled at an extraordinary general meeting called for the purpose, and held within three months after the holding of such general meeting.

Votes of members.

47. Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

48. If any member is a lunatic or idiot he may vote by his committee.

49. If two or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

54. An instrument appointing a proxy may be in the following form, altered to meet the particular circumstances of each case:

I, _____, being a member of the _____
Company, Limited, and entitled to _____ vote [or _____ votes] hereby appoint
_____ of _____ as my proxy to vote for me and on my behalf at the ordinary
[or extraordinary, as the case may be] general meeting of the company to be held on the _____
day of _____, and at any adjournment thereof [or at any meeting of the
company that may be held in the year _____].
As witness my hand this _____ day of _____
Signed by the said _____ in the presence of _____

57. The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

58. The business of the company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by *The Companies Act, 1892*, or by these articles required to be exercised by the company in general meeting, subject, nevertheless, to these articles, to the provisions of the said Act, and to such regulations, not inconsistent with the said articles or provisions, as may be prescribed by the company in general meeting; but no regulations made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulations had not been made.

59. The continuing directors may act, notwithstanding any vacancy in their body.

60. The office of director shall be vacated, if the person filling it:

Shall cease to be the holder of shares in his own right in the company;

Shall hold any other office or place of profit under the company;

Shall become insolvent or assign his estate in pursuance of any Insolvency Act for the time being in force in the said Province; or

Shall be concerned in, or participate in, the profits of any contract with the company:

But the above rules shall be subject to the following exceptions: That no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director. Nevertheless he shall not vote in respect of such contract or work, and if he does so vote, his vote shall not be counted.

Rotation of directors.

61. At the first ordinary meeting after the incorporation of the company the whole of the directors shall retire from office, and at the first ordinary meeting in every subsequent year

¹⁾ "He" (?).

one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

62. The one-third, or other nearest number, to retire during the first and second years following the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third, or other nearest number, who have been longest in office, shall retire.

63. A retiring director shall be re-eligible.

64. The company, at a general meeting at which any directors retire in manner aforesaid, shall fill up the vacated offices by electing a like number of persons.

65. If at any meeting at which an election of directors ought to take place the places of the retiring directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the retiring directors are not filled up, the retiring directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

66. The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

67. Any casual vacancy occurring in the board of directors may be filled up by the directors; but any person so chosen shall retain his office so long only as the director, in whose place he is appointed, would have retained the same if no vacancy had occurred.

68. The company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may, by an ordinary resolution, appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of directors.

69. The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

70. The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose one of their number to be chairman of such meeting.

71. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit, and may revoke all or any of the powers so delegated. Any committee so formed shall, in the exercise of powers so delegated, conform to any regulations that may be imposed on them by the directors.

72. A committee may elect a chairman of their meetings. If no such chairman is elected, or if he is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be chairman of such meeting.

73. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairman shall have a second or casting vote.

74. All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

75. The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to the number and nominal amount of their shares.

76. No dividend shall be payable except out of the profits arising from the business of the company.

77. The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserve fund to meet contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserve fund upon such securities as they may select.

78. The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls.

79. Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned, and all dividends unclaimed for six years after having been declared, shall not after that time be claimable, unless otherwise ordered by the court, and shall be paid to the Treasurer for the public use of the Province, but on the order of the court any unclaimed dividend shall be paid to the person entitled thereto.

80. No dividend shall bear interest as against the company.

Accounts.

81. The directors shall cause true accounts to be kept:
 Of the stock in trade of the company;
 Of the sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure take place; and
 Of the assets and liabilities of the company.

The books of accounts shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of members during the hours of business.

82. Once at least in every six months the directors shall lay before the company, in general meeting, a statement of the income and expenditure for the period succeeding that embraced by the then last statement, made up to a date not more than three months before such meeting.

83. The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the establishment, salaries, and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure, which may in fairness be distributed over several years, has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

84. A balance-sheet shall be made out in every half year and laid before the company, in general meeting, and such balance-sheet shall contain a summary of the assets and liabilities of the company.

85. A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on the Registrar of Companies and every member, in the manner in which notices are hereinafter directed to be served.

Audit.

86. Once at least in every year the accounts of the company shall be examined and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

87. The first auditors shall be appointed by the directors, who may fill any vacancy in the office of an auditor appointed by them. Subsequent auditors shall be appointed by the company in general meeting.

88. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

89. The auditors may be members of the company, but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company, and no director or other officer of the company is eligible during his continuance in office.

90. The election of auditors shall be made by the company at their ordinary meeting in each year.

91. The remuneration of the first auditors shall be fixed by the directors; that of any subsequent auditors shall be fixed by the company in general meeting.

92. Any auditor shall be re-eligible on quitting office.

93. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

94. If no election of auditors is made in manner aforesaid, the Governor may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

95. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

96. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company. He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts; and he may, in relation to such accounts, examine the directors or any other officers of the company.

97. The auditors shall make a report to the members upon the balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations, and properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs; and, in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

98. A notice may be given or served by the company to or upon any member, either personally or by sending it through the post in a prepaid letter, addressed to such member at his registered place of abode.

99. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

100. Any notice, if served by post, shall be deemed to have been served on the day after the day on which it shall be posted, although the person to whom it shall be directed was dead, or shall never receive the same; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post office.

Third Schedule.

Table of Fees to be paid to the Registrar of Companies by a Company having a Capital divided into Shares.

	£	s.	d.
For registration of a company whose nominal capital does not exceed £ 2000, a fee of	2	0	0
For registration of a company whose nominal capital exceeds £ 2000, the above fee of £ 2, with the following additional fees, regulated according to the amount of nominal capital, that is to say:			
For every £ 1000 of nominal capital or part of £ 1000 after the first	£	s.	d.
£ 2000, up to £ 5000	1	0	0
For every £ 1000 of nominal capital or part of £ 1000 after the first			
£ 5000, up to £ 100 000	0	5	0
For every £ 1000 of nominal capital or part of £ 1000 after the first			
£ 100 000	0	1	0
For registration of any increase of capital made after the first registration of the company, the same fees per £ 1000 or part of £ 1000, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards any greater amount of fees than £ 50, taking into account, in the case of fees payable on an increased ¹⁾ of capital after registration, the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies or receiving any notice or other document required to be given to or left or filed with the Registrar, a fee of	0	5	0
On a change of name, for registration of the new name and issue of certificate thereon	2	0	0

Fourth Schedule.

Table of Fees to be paid to the Registrar of Companies by a Company not having a Capital divided into Shares.

	£	s.	d.
For registration of a company whose number of members, as stated in the articles of association, does not exceed twenty	2	0	0
For registration of a company whose number of members, as stated in the articles of association, exceeds twenty but does not exceed one hundred	5	0	0
For registration of a company whose number of members, as stated in the articles of association, exceeds one hundred, but is not stated to be unlimited, the above fee of £ 5, with an additional 5 s. for every fifty members, or less number than fifty members after the first one hundred.			
For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every fifty members or less than fifty members of such increase	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than £ 20, in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association	0	5	0

¹⁾ Sic; obviously "increase".

For making a record of any fact hereby authorised or required to be recorded by the Registrar of Companies, or receiving any notice or other document required to be given to or left or filed with the Registrar, a fee of £ s. d.
 On a change of name, for registration of the new name, and issue of certificate thereon 0 5 0
 2 0 0

*Fifth Schedule.**Form of Statement referred to in Section 42 of Act.*

I [manager, or as the case may be] do solemnly and sincerely declare:

That the liability of the members is limited.

* That the capital of the company is divided into shares of each.

That the number of shares issued is

That calls to the amount of pounds per share have been made under which the sum of pounds has been received.

That the liabilities of the company on the first day of January [or July] last were:

Debts owing to sundry persons by the company:

On judgments £

On specialties £

On notes or bills £

On simple contracts £

On estimated liabilities £

That the assets of the company on that day were:

Government securities [stating them] £

Bills of exchange and promissory notes £

Cash at the bankers £

Other securities and assets £

And I make this declaration under *The Companies Act, 1892.*

* If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

*Sixth Schedule.***Form A. Memorandum of Association of a Limited or No-Liability Company.**

Memorandum of Association of "The Australian Steam Packet Company, Limited"
 [or "*The Ophir Gold Mining Company, No-Liability*"].

1. The name of the company is "*The Australian Steam Packet Company, Limited*" [or "*The Alpha Gold Mining Company, No-Liability*"].

2. The objects for which the company is established are [set forth objects].

3. The liability of the members is limited [or the members take no liability, or the liability of ordinary members is limited, but the liability of the directors, or manager or managing director, is unlimited].

4. The capital of the company is two hundred thousand pounds divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Dated the 22nd day of November, 1891.

Names, Addressees, and Description of Subscribers.	Number of Shares taken by each Subscriber.	Witness.
1. John Jones, of merchant	200	—
2. John Smith, of	25	—
3. Thomas Green, of	30	—
4. John Thompson, of	40	—
5. Caleb White, of	15	—
Total shares taken	310	

Form B. Memorandum and Articles of Association of an Unlimited Company.

Memorandum of Association of the Patent Stereotype Company.

1. The name of the company is "*The Patent Stereotype Company*."

2. The objects for which the company is established are, the working of a patent method of founding and casting stereotype plates, of which method John Smith, of Adelaide, is the patentee.

We, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.
Dated the 22nd day of November, 1864.

Names, Addresses, and Description of Subscribers.	Witness.
1. John Jones, of merchant	—
2. John Smith, of "	—
3. Thomas Green, of "	—
4. John Thompson, of "	—
5. Caleb White, of "	—

Articles of Association of the Patent Stereotype Company.

Capital of the Company.

The capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.
[If the company has not a capital divided into shares, then, in place of the above statement, insert the following: Number of members. The number of members of the company is twenty.]

Application of Table A.

All the articles of Table A. shall be deemed to be incorporated with these articles¹⁾, and to apply to the company [or, insert the articles of the company if Table A. is not adopted, mentioning such articles of Table A. (if any) as are adopted].
We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite to our respective names.
Dated the 22 d day of November, 1864.

Names, Addresses, and Description of Subscribers.	Number of Shares taken by Subscriber.	Witness.
1. John Jones, of merchant	1	
2. John Smith, of	5	
3. Thomas Green, of	2	
4. John Thompson, of	2	
5. Caleb White, of	3	
Total shares taken	13	

[If the company has not a capital divided into shares, state as follows: We, the several persons whose names and addresses are subscribed, agree to become members of the company, and omit the column giving the number of shares taken by each subscriber.]

Form C. List of Members and Summary of Capital and Shares.

List of the Persons who on the 31st day of March, 189 , were Members of the Company [Limited].

Names.	Addresses.	Occupations.	Number of Shares.

Summary of Capital and Shares of the Company [Limited] made up to the 31st day of March, 189 .
Capital £ divided into shares of £ each.
Number of shares taken from the commencement of the Company up to the 31st day of March, 189 .
Amount of calls made on each share, £
Total amount of calls received, £
Total amount of calls unpaid, £
Total amount of shares forfeited, £

¹⁾ *Sic*; obviously "articles".

Persons who have ceased to be Members since the 31st day of March next preceding the completion of the last list, and the number of shares held by each of them on the same 31st day of March.

Names.	Addresses.	Occupations.	Number of shares held on 31st day of March next preceding completion of last list.

Seventh Schedule.

Rules for Proceedings for Winding-up Companies by order of the Court.

Petition.

1. Every petition for winding up a company by order of the Court shall be intitled in the matter of *The Companies Act, 1892*, and of the company to which the petition relates, describing the company by its most usual name or firm.

2. Every such petition shall be advertised seven clear days before the hearing, as follows: a) In the case of a company whose registered office, or if there be no such office, then whose principal, or last known principal, place of business is or was situated within ten miles of the General Post Office in Adelaide, once at least in the *Government Gazette*, and once at least in two daily Adelaide newspapers; — b) In the case of any other company, once at least in the *Government Gazette* and a daily Adelaide newspaper, and once at least in one local newspaper circulating in the district in which such office or place of business is or was situated.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor, and the Adelaide agent of his solicitor, if any.

3. Every such petition shall, unless presented by the company, be served at the registered office, if any, of the company, and, if there be no registered office, then at the principal or last-known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there; or, in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the Court may direct.

4. Every petition for the winding-up of any company by order of the Court shall be verified by an affidavit referring thereto, in the form or to the effect set forth in the table of forms annexed hereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if there be more than one; or in case the petition is presented by the company, by some director and secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and shall be sufficient *prima facie* evidence of the statements in the petition.

5. Every creditor, contributory, or shareholder shall be entitled to be furnished by the solicitor to the petitioner with a copy of such petition, within twenty-four hours after requiring the same, on paying at the rate of sixpence per common law folio for such copy.

Order to wind up a company.

6. Every order made for the winding-up of a company shall, within twelve days after the date hereof, be advertised by the petitioner once in the *Government Gazette*, and shall be served upon such persons (if any) and in such manner as the Court may direct.

7. A Judge's summons shall be taken out to proceed with the winding-up of the company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons a time shall, if the Judge thinks fit, be fixed for the appointment of an official liquidator.

Reports and examination by official liquidator.

8. Where the Court has made an order for winding up a company, the official liquidator may, if he thinks fit, and shall, if ordered by the Court, submit a preliminary report to the Court: a) As to the amount of capital, issued subscribed, and paid up, and the estimated amount of assets and liabilities; — b) If the company has failed, as to the cause of the failure; and c) Whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

9. The official liquidator may also, if he thinks fit, and shall, if ordered by the Court, make a further report, or further reports, stating the manner in which the company was formed, and whether in his opinion any fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which, in his opinion, it is desirable to bring to the notice of the Court.

10. The Court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation of the company, or as

to the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company.

11. The official liquidator shall take part in the examination, and for that purpose may employ a solicitor or counsel, or both.

12. The official liquidator, and any creditor, contributory, or shareholder of the company may also take part in the examination, either personally or by solicitor or counsel.

13. The Court may put such questions to the person examined as to the Court may seem expedient.

14. The person examined shall be examined on oath, and shall answer all such questions as the Court may put, or allow to be put to him. The person examined shall, at his own cost prior to such examination, be furnished with a copy of the official liquidator's report, and shall also at his own cost be entitled to employ at such examination a solicitor or counsel, or both, who shall be at liberty to put such questions to the person examined as the Court may deem just for the purpose of enabling that person to explain or qualify any answers given by him.

15. If such person is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as the Court in its discretion may think fit. Notes of the examination shall be taken down in writing, and shall be read over to or by and signed by the person examined, and may thereafter be used in evidence against him. They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times.

16. The Court may, if it thinks fit, adjourn the examination from time to time.

17. A public examination under the foregoing rules numbered 10, 11, 12, 13, 14, 15, and 16 may, if the Court so directs, be held before any officer of the Supreme Court, and the powers of the Court under rules numbered 13, 14, and 16 may be exercised by the person before whom the examination is held.

Official liquidators.

18. The official liquidator shall be appointed by order, which shall direct that all moneys to be received shall be paid into some bank, approved for the purpose by the Judge, within seven days after the receipt thereof, to the account of the official liquidator of the company, and an account shall be opened there accordingly, and an office copy of the order shall be lodged at the bank.

19. The official liquidator shall, whenever required by a Judge, satisfy the Judge that his sureties are living and resident in South Australia, and have not become insolvent, or assigned their estate for the benefit of, or compounded with, their creditors; and in default thereof, may be required to enter into fresh security within such time as shall be directed.

20. Every appointment of an official liquidator shall be advertised in such manner as the Judge shall direct, immediately after the appointment has been made.

21. Where it is desired to appoint provisionally an official liquidator, an application for that purpose, may, at any time after the presentation of the petition of an order for winding up the company, be made by summons, without advertisement or notice to any party, unless the Judge otherwise directs.

22. In the case of the death, removal, or resignation of an official liquidator, another shall be appointed in his place in the same manner as directed in the case of a first appointment; and the proceedings for that purpose may be taken by any party interested.

23. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete, and rectify the books of account of the company, and shall provide and keep such books of account as may be necessary for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger, which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made, as provided by the said Act and these rules.

24. The official liquidator shall be allowed in his accounts or otherwise be paid, such salary or remuneration as the Judge may from time to time direct, including any necessary employment of assistants or clerks by the official liquidator, to which regard shall be had, and such salary or remuneration may either be fixed at the time of the appointment of the official liquidator, or at any time thereafter, as the Judge may think fit.

Proof of debts.

25. For the purpose of ascertaining the debts and claims due from the company, and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued by the official liquidator, and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the official liquidator, and shall appoint a day for determining as to the allowance of such debts or claims.

26. The creditors need not attend upon the determination, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator, but upon such notice being given, they are to come in and prove their debts, within a time to be therein specified.

27. The official liquidator shall investigate the debts and claims sent to him, and ascertain, as far as he is able, which of such debts and claims are justly due from the company.

28. At the time appointed for determining as to the allowance or otherwise of the debts and claims, or at any adjournment thereof, the official liquidator may either allow the debts and claims, or may require the same, or any of them, to be proved by the claimants by affidavit, and adjourn the determination thereon to a time to be then fixed, and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed of such allowance.

29. The official liquidator shall give notice to the creditors whose debts or claims have not been allowed that they are required to prove the same by affidavit, by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement, or by adjournment (as the case may be), for determining as to the allowance of such debts and claims.

30. The value of any provable debt coming under section 167 of the foregoing Act shall, so far as is possible, be estimated according to the value thereof, at the date of the order to wind up the company.

31. The result of the determination upon debts and claims shall be stated in a certificate made by the official liquidator, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and if the same shall be allowed as against any particular assets, or in any other qualified or special manner, shall specify accordingly, and notice shall be given by the official liquidator to the several creditors who have filed affidavits of the allowance or disallowance of their respective claims.

List of contributories.

32. The official liquidator shall, with all convenient speed after his appointment, make out a list of the contributories of the company, if not a no-liability company, and such list shall, so far as is practicable, state the respective addresses of, and the number of shares, or extent of interest to be attributed to, each contributory, and distinguish the several classes of contributories, and such list may, from time to time, be varied or added to by the official liquidator.

33. The official liquidator shall appoint a time to settle the list of contributories, and shall give notice in writing to every person included in such list of such appointment, stating in what character, and for what number of shares or interest, such person is included in the list, and where any variation or addition to such list is at any time made by the official liquidator, a similar notice shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition.

34. The result of the settlement of the list of contributories shall be stated in a certificate by the official liquidator, and certificates may be made from time to time, for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list.

Sales of property.

35. The official liquidator may sell any real or personal property belonging to the company either by public auction or private contract, either in one lot or in several lots, and the official liquidator shall do all acts and things necessary for effecting and completing such sale.

Payment in of moneys and deposit of securities.

36. If any official liquidator do not pay all moneys received by him into some bank approved by a Judge within seven days next after the receipt thereof, such official liquidator shall, unless the Judge otherwise directs, be charged in his account with twenty shillings for any sum amounting to one hundred pounds, and a proportionate sum for any larger amount retained in his hands beyond such period, for every seven days during which the same have been so retained; and the Judge may also, for any such retention, disallow his salary or remuneration, or any part thereof.

37. All bills, notes, and other securities payable to the company, or to the official liquidator thereof, shall, as soon as they come to the hands of the official liquidator, be deposited by him in some bank as aforesaid, for the purpose of being presented by the bank for acceptance and payment, or for payment only, as the case may be.

Investment and payment out of moneys.

38. All bills, notes, and other securities paid and delivered into a bank, shall be delivered out upon a request, signed by the official liquidator; and moneys placed to the account of the official liquidator shall be paid out upon cheques or orders, signed by the official liquidator.

39. All or any part of the money, for the time being standing to the credit of the account of the official liquidator, at any bank, and not immediately required for the purposes of the winding-up, may be invested in the name of the official liquidator in the purchase of Government securities, or in such other manner as trust funds are directed or authorised by statute to be invested.

Direction or sanction of the Judge.

40. Should the official liquidator require the direction or sanction of the Judge for any proceeding or act to be taken or done by him, the same shall be obtained upon summons, and an order shall be drawn up thereon, unless the Judge shall otherwise direct.

41. When an advertisement is required for any purpose, except where these rules otherwise direct, the advertisement shall be inserted once in the *Government Gazette*, and in such other newspaper or newspapers, and for such number of times, as a Judge may direct. A Judge may in such cases as he thinks fit dispense with any advertisement required by these rules.

Filing of documents.

42. All orders, exhibits, memorandums, admissions, and office copies of affidavits, examinations, depositions, certificates, and all other documents relating to the winding-up of any company shall be filed by the official liquidator, as far as may be, in one continuous file, and such file shall be kept by the official liquidator, or otherwise, as the Judge may from time to time direct. Every contributory or shareholder of the company, and every creditor thereof whose debt or claim has been allowed, shall be entitled at all reasonable times to inspect such file free of charge, and at his own expense to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts, at a rate not exceeding sixpence per common law folio, and such file shall be produced in Court or before the Judge, and otherwise as occasion requires.

Admission of documents.

43. Any party to any proceeding in court or chambers relating to the winding-up of a company may, by notice in writing, call on any other party therein competent to admit the same, to admit any document, saving all just exceptions, and, in case of refusal or neglect so to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, unless the Judge is of opinion that the refusal to admit was reasonable, and no costs of proving any document shall be allowed unless such notice have been given, except in cases where the omission to give notice is, in the opinion of the taxing officer, a saving of expense.

Attendance and appearance of parties.

44. Every shareholder of the company, and every person for the time being on the list of contributories of the company, and every person having a debt or claim against the company allowed by the official liquidator, shall be at liberty at his own expense to attend any proceedings before the Judge, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the Judge be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs, which ought not to be borne by the funds of the company, he may direct such costs or a gross sum in lieu thereof to be paid by such person, and such person shall not be entitled to attend any further proceedings until he has paid the same.

45. The Judge may from time to time appoint any one or more of the creditors, contributories, or shareholders, as he thinks fit, to represent before him, at the expense of the company, all or any class of the creditors, contributories, or shareholders upon any question as to a compromise with any of the creditors, contributories, or shareholders or in or about any other proceedings before him relating to the winding-up of the company, and may remove the person or persons so appointed. In case more than one person shall be so appointed they shall, if they desire to appoint a solicitor, unite in employing the same solicitor to represent them.

46. No creditor, contributory, or shareholder shall be entitled to attend any proceedings at the chambers of the Judge unless and until he has entered in a book to be kept there for that purpose his name and address, and the name and address of his solicitor (if any), and, upon any change of his address or of his solicitor, his new address and the name and address of his new solicitor. The address of any such solicitor shall be in Adelaide.

Provisional liquidator.

47. All the above rules relating to an official liquidator shall, so far as circumstances will permit, and subject in each case to the direction of the Judge, apply to a provisional liquidator.

Services of summonses, notices, etc.

48. Services upon creditors, contributories, or shareholders may be effected (except when personal service is required) by sending the notice or a copy of the summons, or order, or other proceeding, through the post in a prepaid letter, addressed to the solicitor (if any) of the party to be served, or otherwise to the party himself, at the address entered or last entered pursuant to the above rule, No. 46, or if no such entry has been made, then, as to a contributory or shareholder, to his last known address or place of abode in the province, and such notice or copy summons, order, or other proceeding, shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post office, and notwithstanding the same may be returned by the post office.

49. Service on a creditor in a case where the last preceding rule does not apply, or on a contributory or shareholder in any special case, may be effected¹⁾ in such manner as a Judge shall direct.

50. No service under these rules shall be deemed invalid by reason of the Christian name or any of the Christian names of the person on whom service is sought to be made being omitted, or designated by initial letters in the list of contributories, or in the summons, notice, order,

¹⁾ *Sic*; obviously "effected".

or other document wherein the name of any creditor, contributory, or shareholder is contained, if the Judge is satisfied that such service has been in other respects sufficient.

Termination of winding-up.

51. Upon the termination of the winding-up of any company, a balance-sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit. And the official liquidator shall pass his final account, and the balance (if any) due thereon shall be certified by the associate.

52. When the official liquidator has passed his final account, a certificate shall be made by the associate that the affairs of the company have been completely wound up.

53. When the proceedings for winding up any company have been completed, the book containing the account of the official liquidator shall be deposited in the Registrar's office.

54. Where no mode of proceeding is prescribed by these rules for any application authorised under the said Act to be made to the Court, and there is no mode of proceeding defined according to the general practice of the Court, such application may be made by summons in chambers, or in such other manner as the Court may direct.

55. The Court shall have power, notwithstanding these rules, to enlarge the time for doing any act, or taking any proceeding although such time may have expired, to abridge any such time, to adjourn or review any proceeding, and to give any direction as to the course of proceeding.

Forms.

56. The forms set forth or referred to in the Table of Forms annexed to these rules, or forms to the like effect, with such variations as the circumstances of each case may require may be used for the respective purposes mentioned in the titles of such forms.

Forms.

No. 1. Advertisement of petition.

In the matter of *The Companies Act, 1892*, and of the _____ Company
Notice is hereby given, that a petition for an order for winding up the above-named company was on the _____ day of _____ 18____ presented to _____ by the said company [or by A.B. of _____] a creditor [or contributory or shareholder] of the said company [or as the case may be]. And the said petition is directed to be heard on the _____ day of _____ 18____, and any creditor, contributory, or shareholder of the said company desirous to oppose the making of an order for the winding-up of the said company, under the above Act, should appear at the time of hearing, by himself or his counsel, for that purpose; and a copy of the petition will be furnished to any creditor, contributory, or shareholder of the said company requiring the same, by the undersigned, on payment of the regular charge for the same.

C. and D., of, etc., [agents for E. and F., of, etc.], solicitors for the petitioner.

No. 2. Affidavit verifying petition.

In the Supreme Court.

In the matter, &c.

I, A. B., of &c., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A, as relate to my own acts and deeds, are true, and such of the said statements as relate to the acts and deeds of any other person or persons, I believe to be true.

Sworn, etc.

No. 3. Order by the Court for winding-up.

In the Supreme Court.

day of _____

day of _____

18¹⁾

In the matter, etc.

Upon the petition of the above-named company [or A. B., of, etc., a creditor [or contributory or shareholder] of the above-named company] on the _____ day of _____ 18____ preferred unto _____ and upon hearing counsel for the petitioner and for _____, and upon reading the said petition and the affidavit of (the said petitioner) filed, etc., verifying the said petition and the affidavit of L.M., filed the _____ day of _____, 18____, the *Government Gazette* of the _____ day of _____, the _____ newspaper, of the _____ day of _____ [enter any other papers] each containing an advertisement of the said petition [enter any other evidence] His Honor [or this Court] doth order that the said _____ company be wound up under the provisions of *The Companies Act, 1892*.

¹⁾ *Sic.*

No. 4. *Advertisement of order to wind up.*

In the Supreme Court.

In the matter, etc.

By an order made by _____ in the above matter, dated the _____ day of _____ 18, on the petition of the above-named company [or A.B., of _____] it was ordered that, etc. [*as in order*].
C. and D., of, etc., Solicitor for the said petitioner.

No. 5. *Order appointing official liquidator.*

In the Supreme Court.

In the matter, etc.

Upon the application, etc., and upon reading, etc., His Honor doth hereby appoint R.P., of, etc., official liquidator of the above-named company. And it is ordered that all moneys to be received by the said R.P. be paid into the Bank of _____ to the credit of the account of the official liquidator of the said company, within seven days after the receipt thereof. [*In case two or more official liquidators are appointed, add, And His Honor doth declare that the following acts, required or authorised by the above statute to be done by the official liquidator, may be done by either [or any one or two] of the official liquidators hereby appointed, that is to say [describe the acts], and that all other acts so required or authorised to be done, be done by both (or all) the official liquidators hereby appointed.*]

Dated the _____ day of _____ 18

No. 6. *Order appointing a provisional official liquidator.*

In the Supreme Court.

In the matter, etc.

Upon the application, etc., and upon reading, etc., His Honor doth hereby appoint R.P., of, etc., provisionally official liquidator of the above-named company [*add directions as to payment into bank, as in form No. 19*]. And His Honor doth hereby limit and restrict the powers of the said R.P. as such provisional official liquidator to the following acts, that is to say [*describe the acts which the provisional official liquidator is to be authorised to do*].

Dated the _____ day of _____ 18

No. 7. *Order for payment of money or delivery of books, etc., to official liquidator.*

In the Supreme Court.

In the matter, etc.

Upon the application of, etc., and on reading, etc., His Honor doth order that A.B., of, etc., do, within four days after service hereof, pay to [or deliver, convey, surrender, or transfer to, or into the hands of] R.P., the official liquidator of the said company, at the office of the said R.P., situate at, etc., the sum of £ _____, being the amount of debt appearing to be due from the said A.B. on his account with the said company [or any sum or balance, books, papers, estate, or effects or *specifically describe the property*] now being in the hands of the said A.B., and to which the said company is *prima facie* entitled [or otherwise as the case may be].

Dated the _____ day of _____ 18

No. 8. *Advertisement of appointment of official liquidator.*

In the matter, etc.

His Honor _____ has, by an order dated the _____ day of _____ 18 appointed R.P., of _____ to be official liquidator of the above-named company.

Dated this _____ day of _____ 18

H.B.T., Associate.

No. 9. *Advertisement for creditors.*

In the matter, etc.

The creditors of the above-named company are required, on or before the _____ day of _____ 18 to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to R.P., of _____ the official liquidator of the said company; and, if so required by notice in writing from the said official liquidator, are, by their solicitors, or otherwise, to prove their said debts or claims, at the office of the official liquidator, _____, at such time as shall be specified in such notice, or in default thereof they will be excluded from the benefit of any distribution made before such debts are proved.

_____ day the _____ day of _____ 18 at _____ o'clock in the _____ noon, at the said office, is appointed for determining as to the allowance of the debts and claims.

Dated this _____ day of _____ 18

Official Liquidator.

No. 10. *Notice to creditor of allowance of debt.*

In the matter, etc.

[Place and date.]

Sir—The debt claimed by you in this matter has been allowed by me at the sum of £
[If part only allowed, add If you claim to have a larger sum allowed, you are hereby required to prove the further amount claimed, etc., as in the next form.]

I am, etc.,

To Mr. P.R.

R.P., Official Liquidator.

No. 11. *Notice to creditor to prove debt.*

In the matter, etc.

You are hereby required to prove the debt claimed by you against the above-named company, by filing an affidavit, and giving notice thereof to me on or before the _____ day of _____ next, and you are to attend personally or by your solicitor at the office of the official liquidator, on the _____ day of _____ 18 at o'clock in the _____ noon, being the time appointed for determining as to the allowance of the claim.

Dated this _____ day of _____ 18 .

To Mr. S.T.

R.P., Official Liquidator.

No. 12. *Affidavit of creditor in proof of debt.*

In the Supreme Court.

In the matter, etc.

I, S.T., of etc., make oath and say as follows: —

1. The above-named company was on the _____ day of _____ 18 , the date of the order for winding up the same, and still is, justly and truly indebted to me in the sum of £ _____ for, etc. *[describe shortly the nature of the debt and exhibit any security for it; and in the case of a trade debt, exhibit a bill of parcels and verify the reasonableness of the charges, as in proving a debt in an administration action.]*

2. I have not, nor hath, nor have any person or persons, by my order or to my knowledge or belief, for my use received the said sum of £ _____ or any part thereof, or any security or satisfaction for the same or any part thereof *[if any security, add]* except the said *[describe security]* hereinbefore mentioned or referred to.

Sworn, etc.

No. 13. *Notice to creditor of allowance of debt on affidavit.*

In the matter, etc.

[Place and date.]

Sir—The debt claimed by you in this matter, and in respect of which you have filed an affidavit, has been allowed by me at the sum of £ _____ *[If part only allowed add If you claim to have a larger sum allowed, you must apply to the Supreme Court or a Judge thereof.]*

I am, etc.,

To Mr. P.R.

R.P., etc., Official Liquidator.

[Address.]

No. 14. *Notice to creditor of disallowance of debt after affidavit filed.*

In the matter, etc.

[Place and date.]

Sir—The debt claimed by you in this matter, and in respect of which you have filed an affidavit, has been disallowed by me. If you claim to have the same allowed you must apply to the Supreme Court or a Judge thereof.

To Mr. R.P.

I am, etc.,

R.P., etc., Official Liquidator.

[Address.]

No. 15. *Certificate of official liquidator as to debts and claims.*

In the Supreme Court.

In the matter, etc.

I hereby certify that the result of my determination upon debts and claims against the above-named company, brought in pursuant to the advertisement issued in that behalf, dated the _____ day of _____, 18 , so far as such determination has, up to the date of this certificate, been proceeded with, is as follows: —

The debts and claims which have been allowed are set forth in the first schedule hereto, and are due to the persons therein named, and amount altogether to £ _____

The claims set forth in the second schedule hereto have been brought in by the persons therein named, and have been disallowed.

The First Schedule above referred to.

Debts and claims allowed.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Debt.	Total Due.
I	J. L.	street, Adelaide, Stationer Principal Interest at £ per cent. per annum, from 18 , to 18, date of order for winding up.	On bill of exchange dated, etc. £ £ Goods sold. £ 50 0 0	£ s. d.
2	W. P.	15 street, Adelaide, Coal Merchant. Principal	Total £	

The Second Schedule above referred to.

Claims disallowed.

No.	Names of Creditors.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.

Dated this day of 18 .

R.P., Official Liquidator.

No. 16. *Notice to contributories of appointment to settle list of contributories.*

In the matter of, etc.]

I, of , the official liquidator of the above-named company have appointed the day of 18 , at of the clock in the noon at to settle the list of the contributories of the above-named company; and you are included in such list in the character and for the number of shares [or extent of interest] stated below; and if no sufficient cause is shown by you to the contrary, at the time and place aforesaid, the list will be settled by me, including you therein.

Dated this day of 18 .

R.P., Official Liquidator.

To Mr. A.B. [and to }
Mr. C.D., his solicitor] }

No. on List.	Name.	Address.	Description.	In what character included.	Number of Shares [or extent of interest].

No. 17. *Certificate of official liquidator of settlement of the list of contributories.*

In the matter, etc.

I, , official liquidator of the above-named company do hereby certify that the result of the settlement of the list of contributories of the above-named company, on the day of , 18 , so far as the said list has been settled up to the date of this certificate, is as follows: —

1. The several persons whose names are set forth in the second column of the first schedule hereto have been included in the said list of contributories as contributories of the said company in respect of the number of shares [or extent of interest] set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of or being liable for the debts of others.

2. The several persons whose names are set forth in the second column of the second schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh columns of the said first and second schedules respectively set forth opposite the name of each of the said several persons the date when such person was included in, or excluded from, the said list of contributories.

First Schedule above referred to.

First Part. Contributories in their own right.

Serial No. in List.	Name.	Address.	Description.	In what character included.	No. of Shares [or extent of Interest].	Date when included in the List.

Second Part. Contributories as being representatives of, or liable for, the debts of others.

Serial No. in List.	Name.	Address.	Description.	In what character included.	No. of Shares [or extent of interest].	Date when included in the List.

Second Schedule above referred to.

Serial No. in List.	Name.	Address.	Description.	In what character proposed to be included.	No. of Shares [or extent of interest].	Date when excluded from the List.

Dated this day of 18

R.P., Official Liquidator.

No. 18. *Affidavit in support of application for order for payment of call due from contributories in the Supreme Court.*

In the matter, etc.

I, R.P., of, etc., the official liquidator of the above-named company, make oath, and say as follows:—

1. None of the contributories of the said company whose names are set forth in the schedule hereunto annexed, marked A, have paid or caused to be paid the respective sums set opposite their respective names in the said schedule, and which sums are the respective amounts now due from them respectively in respect of the call of £ per share, made herein on the day of 18 .

2. The respective amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively in respect of the said call.

3. [State how notice of call was given to each contributory, or show this by a separate affidavit.] Sworn, etc.

A. The Schedule above referred to.

No. on List.	Name.	Address.	Description.	In what character included.	Amount due.

No. 19. *Order for payment of call due from a contributory.*

In the Supreme Court.

In the matter, etc.

Upon the application of the official liquidator of the above-named company, and upon reading an affidavit of filed the day of 18 , and an

affidavit of the said official liquidator, filed the day of 18 : His Honor doth order that C.D., of, etc. [or E.F., of, etc., the representative of L.M., late of, etc., deceased] one of the contributories of the said company [or *if against several contributories*, the several persons named in the second column of the schedule to this order, being respectively contributories of the said company], do on or before the day of 18 , [or within four days after service of this order] pay into the Bank of to the account of the official liquidator of the company [or to A.B., the official liquidator of the said company, at his office] the sum of £ [if against a representative, add out of the assets of the said L.M., deceased, in his hands as such representative, as aforesaid, to be administered in a due course of administration, if the said E.F. has in his hands so much to be administered, or *if against several contributories*, the several sums of money set opposite to their respective names in the sixth column of the said schedule hereto] such sum [or sums] being the amount [or amounts] due from the said C.D. [or L.M.] [or the said several persons respectively] in respect of the call of £ per share, made by the said official liquidator on the day of 18 .

Dated this day of 18 .

Schedule referred to in the foregoing Order.

No. on List.	Name.	Address.	Description.	In what character included.	Amount due.
					£ s. d.

No. 20. Memorandum of agreement of compromise with a contributory.

In the matter, etc.

Memorandum of agreement entered into this day of 18 , between R.P., of, etc., the official liquidator of the above-named company, of the one part, and S.B., of, etc., one of the contributories of the said company, of the other part.

Whereas the said S.B. has been settled on the list of contributories of the said company, as a contributory in respect of shares in the said company, and whereas a call of £ per share was made on all the contributories of the said company, and there is now due, from the said S.B. to the said company, the sum of £ , in respect of the said call. And whereas the said S.B. has proposed to pay to the said official liquidator the sum of , by way of compromise, and in satisfaction and discharge of the said sum of , and of all liability whatsoever as a contributory of the said company: And whereas the said official liquidator having investigated the affairs of the said S.B., and believing that such compromise will be beneficial to the said company, hath, in exercise of the power for that purpose given to him by the above statute, agreed to accept the same, subject to the conditions and agreements hereinafter contained: Now it is hereby agreed, by and between the said parties hereto:

1st. That the said S.B. shall, within days from this date, pay to the said official liquidator the said sum of £ , and when thereto required shall do and execute all such acts and deeds as may be necessary for transferring, or surrendering and releasing, to the said official liquidator, on behalf of the said company, or in such manner as the said official liquidator may direct, the said shares, held by the said S.B. in the said company, and all claim and demand whatsoever, which the said S.B. has, or may have, against the said company, in respect of the said shares, or the distribution of the assets of the said company, or otherwise howsoever.

2nd. That the said sum of £ , and the transfer, or surrender and release of the said shares and interest of the said A.B., as aforesaid, shall be accepted by the said official liquidator as, and be deemed and taken to give, to the said S.B. full and complete discharge from all calls and liabilities, claims, and demands whatsoever, which the said company, or the official liquidator thereof now has, or may hereafter have, or be entitled to against the said S.B., in respect of his being, or having been, the holder of the said shares, or otherwise as a contributory of the said company.

R.P., Official Liquidator.
S.B.

Witness to the signatures of the said }
R.P. and S.B., C.D., of, etc. }

No. 21. *Appearance book.*

In the matter, etc.

Appearance Book.

Date when Appearance entered.	Party's Name.	Whether Creditor, Contributory, Shareholder.	If he appears in person, his Address for Service.	If he appears by a Solicitor, his Solicitor's Name.	Solicitor's Address.	Amount of Debt [or Number of Shares].

No. 22. *Certificate of the company being completely wound up, and of the official liquidator having passed his final account.*

In the matter, etc.

I hereby certify that R.P., the official liquidator of the above-named company, has passed his final account as such official liquidator, and that the balance of £ thereby certified to be due to [or from] the said official liquidator has been paid in the manner directed by the order dated the day of 18 , and that the affairs of the said company have been completely wound up.

The evidence produced, etc.

Dated this day of 18 .

H.B.T., Associate.

No. 23. *Order to dissolve the company.*

In the Supreme Court.

In the matter, etc.

Upon the application of the official liquidator of the above-named company, and upon reading the associate's certificate herein, dated the day of whereby it appears that the affairs of the said company have been completely wound up, His Honor doth order that the said company be dissolved as from this day of 18 .

Rules for Meetings of Creditors, Contributories, or Shareholders of a Company under Liquidation.

1. The liquidator of the company shall summon any meeting of creditors, contributories, or shareholders of the company, by giving not less than seven days' notice of the time and place thereof in the *Government Gazette*, and in two daily newspapers published in Adelaide. Notice of such meeting shall also be sent by post to every person appearing to be a creditor of the company in the case of a meeting of creditors, and to every contributory or shareholder in the case of a meeting of contributories or shareholders. The notice shall state the object of the meeting, unless a Judge otherwise directs.

2. The meeting shall be held at such place as is in the opinion of the liquidator most convenient for the majority of the creditors or contributories or shareholders as the case may be.

3. The liquidator, or some person nominated by him or by the Court, shall be the chairman at the meetings.

4. A person shall not be entitled to vote as a creditor unless he has duly proved a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting.

5. A creditor shall not vote in respect of any unliquidated or contingent debt, or any other debt the value of which is not ascertained.

6. For the purpose of voting a secured creditor shall unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. He may, however, give up the security, and thereupon he may vote in respect of the whole sum due to him. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

7. A creditor shall not vote in respect of any debt secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and who has not been adjudicated insolvent or made an assignment for the benefit of or compounded with his creditors, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

8. The liquidator may, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty pounds per centum: Provided that where a creditor has put a value on such security he may at any time before he has been required to give up such

security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case the liquidator may require him to give up the security for the benefit of the creditors generally on payment of such new value only.

9. The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

10. A creditor, contributory, or shareholder may vote either in person or by proxy.

11. [As amended by b. (No. 576) § 10.] Every instrument of proxy shall be in the form at the foot of these rules, or in a similar form with variations as required.

12. An instrument of proxy shall not be used unless it be deposited with the liquidator before the meeting at which it is to be used.

13. A creditor, contributory, or shareholder may appoint the liquidator to act as his proxy.

14. The chairman of the meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

15. A meeting shall not be competent to act for any purpose, except the election of a chairman, and the adjournment of the meeting, unless there are present or represented thereat at least three creditors, contributories, or shareholders, or all the creditors, contributories, or shareholders if their number does not exceed three.

16. If within half an hour from the time appointed for the meeting a quorum of creditors, contributories, or shareholders is not present or represented the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven nor more than twenty-one days.

17. The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him, or by the chairman of the next ensuing meeting, or by the liquidator. Such minutes, or the chairman's certificate of the result of the meeting, shall be sufficient evidence of the result as stated in such minutes or certificate.

Forms.

The following forms, or forms to the like effect, may be used, with such variations as circumstances require: —

Appointment of proxy to vote at meeting of creditors, contributories, or shareholders.

In the matter, etc.

I, W.S., of _____, being a creditor [or contributory or shareholder] of the above-named company, hereby appoint _____, of _____, as my proxy, to vote for me and on my behalf at the meeting of the creditors [or contributories or shareholders] of the said company to be held on the _____ day of _____, and at any adjournment thereof. As witness my hand this _____ day of _____, 18 ____.

W.S.

Signed by the said W.S., in the presence of
J.M., of, etc.

Chairman's certificate of result of meeting of creditors, contributories, or shareholders.

In the matter, etc.

I, H.T., chairman of a meeting of the creditors [or contributories or shareholders] of the above-named company, summoned by advertisement [or notice] dated the _____ day of _____ 18 __, and held on the _____ day of _____ 18 __, at _____ do hereby certify the result of such meeting as follows: — The said meeting was attended, either personally or by proxy, by _____ creditors, who have proved debts against the said company, amounting in the whole to the value of £ _____ [or by _____ contributories or shareholders, holding in the whole _____ shares in the said company, and entitled respectively, by the regulations of the company, to the number of votes hereinafter mentioned]. The question submitted to the said meeting was whether the creditors [or contributories, or shareholders] of the said company approved of the proposal of the official liquidator of the said company, that, etc. [as the case may be], and wished that such proposal should be adopted and carried into effect. The said meeting was unanimously of opinion that the said proposal should [or should not] be adopted and carried into effect; or the result of the voting upon such question was as follows: — The undermentioned creditors [or contributories or shareholders] voted in favor of the said proposal being adopted and carried into effect:

Name of Creditor [or Contributory or Shareholder].	Address.	Value of Debt [or Number of Shares].	Number of Votes conferred on each Contributory [or Shareholder] by the Regulations of the Company.

The undermentioned creditors [or contributories, or shareholders] voted against the said proposal being adopted and carried into effect: —

Name of Creditor [or Contributory or Shareholder].	Address.	Value of Debt [or Number of Shares].	Number of Votes conferred on each Contributory [or Shareholder] by the Regulations of the Company.

Dated this

day of

18

(Signed)

H. T., Chairman.

b) 56 & 57 Vic. No. 576. An Act to amend The Companies Act, 1892, and for other Purposes (23d December, 1893).

Short title. 1. This Act may be cited as *The Companies Amendment Act, 1893*, [2 amends a. (No. 557) § 3, *supra*, and is there incorporated.]

Provisions as to foreign quasi-corporations. 3. 1. In section 3 of *The Companies Act, 1892*, shall be read at the end and as forming part of the definition of "foreign company" the words "and shall extend to and include any unincorporated joint stock company which may sue or be sued or hold property in a common name, and which shall not have its head office or principal place of business in South Australia"; but no such company carrying on business in South Australia at the time of the passing of this Act need comply with the provisions of the principal Act, or of this Act, until after the thirtieth day of June, one thousand eight hundred and ninety-four. [2. Amends a. (No. 557) § 196, *supra*, and is there incorporated.]

Amendment of sections 68, 75, 76, and 77 of The Companies Act, 1892. 4. Section 68 of *The Companies Act, 1892*, so far as subsections I., II., III., and IV. of such section are concerned, and sections 75, 76, and 77 of the same Act, shall apply to a no-liability company registered under such Act as well as to a company limited by shares.

Amendment of section 196 of The Companies Act, 1892. 5. In section 196 of *The Companies Act, 1892*, sub-section IV., all the words after the word "and" in the third line thereof are hereby repealed, and in lieu of the words so repealed shall be read the words "if the company be incorporated evidence of its incorporation pursuant to section 207 of this Act". This amendment shall not apply where a company has, previously to the passing of this Act complied with sub-section 4 of section 196 of the principal Act.

[6 amends a. (No. 557) § 199, *supra*, and is there incorporated.]

[7 amends a. (No. 557) § 210 (1), *supra*, and is there incorporated.]

Provision as to foreign life assurance companies. 8. Any foreign company which has complied with sections 25 and 26 of the *Life Assurance Companies Act, 1882*, shall, so long as the power of attorney, copy whereof has been deposited under these sections, continues in force, be deemed to have complied with section 196, sub-sections I., II., III., and IV. of *The Companies Act, 1892*, except as regards the deposit in the office of the Registrar of evidence of incorporation; and compliance on the part of any foreign life assurance company with the provisions of Part VIII. of *The Companies Act, 1892*, shall be deemed to be compliance with the provisions of the said sections 25 and 26 of the *Life Assurance Companies Act, 1882*.

Attorney may delegate powers. 9. In section 196 of the principal Act shall be read at the end and as forming a new sub-section the words: VI. Where any foreign company shall by power of attorney (hereinafter referred to as the original power of attorney) under its common seal, or executed in such manner as to be binding on the company, empower some person, whether in the Province or¹⁾ South Australia or elsewhere, to act as its attorney with the powers referred to in sub-section I., and such attorney shall, in exercise of a power thereby conferred, delegate such powers to any other person or appoint a substitute in the said Province to exercise such powers, such company shall be deemed to have complied with sub-sections I.,

¹⁾ *Sic*; obviously "of".

II., III., IV. and, V. a) A declaration, with respect to such original power of attorney shall be made by one of the directors or the general manager or secretary of the company, in accordance with the provisions of sub-section II., and such declaration shall be indorsed on or annexed to such original power of attorney; b) the deed under which such powers as aforesaid are delegated, or substitutionary power of attorney as the case may be (which deed and substitutionary power of attorney, as the case may be, are hereinafter included in the designation "the sub-power of attorney"), shall be executed in the presence of two witnesses, and there shall be attached thereto a statutory declaration, made before a British consul, notary, or other person authorised to take the same, by one of such attesting witnesses to the effect that such sub-power of attorney has been duly executed; c) the company shall deposit in the office of the Registrar of Companies the original power of attorney and also the sub-power of attorney with the respective declarations attached thereto, and if the company shall be incorporated evidence of its incorporation, pursuant to section 207 of the principal Act; d) the attorney acting under the sub-power of attorney shall comply with sub-section V. — W. A. f. (2 Edw. 7, No. 19) 2; and see notes to S. A. a. (No. 557) 196.

[10 amends a. (No. 557) Sched. VII., and is there incorporated.]

This Act retrospective. 11. This Act (section 3 excepted) shall be read as if it had been passed immediately after the passing of *The Companies Act, 1892*.

c) 6 Edw. 7, No. 914. An Act to further amend *The Companies Act, 1892* (22d December, 1906).

Short title and incorporation. 1. This Act may be cited as *The Companies Act Further Amendment Act, 1906*, and shall be incorporated with *The Companies Act, 1892*, (hereinafter called "the principal Act"), and the Act amending the same.

Interpretation. 2. In this Act "Court" means the Supreme Court of the said State or a Judge thereof.

Balance-sheet to be filed. 3. Every official liquidator shall, once at least in every six months during the winding-up of any company, file with the Registrar a balance-sheet, accompanied by a statement in writing signed by such liquidator, so that such balance-sheet and statement show his dealings under and acts done in the matter of the winding-up: Provided that the Court may, upon due cause shown from time to time, order that this section shall not apply in any particular case or for any particular time.

Provision for complaint if not filed. 4. If any official liquidator shall fail to file such balance-sheet and statement, or either of them, for fourteen days after the expiration of six months from the date of his appointment, or for fourteen days after the expiration of any subsequent period of six months calculated from the date of his appointment, any shareholder or creditor of the company may lodge with the Registrar a complaint in writing of failure to file such balance-sheet and statement or the insufficiency of such balance-sheet and statement.

Proceedings consequent upon complaint. 5. a) Upon receipt of any complaint purporting to be made by any such shareholder or creditor the Registrar shall forthwith issue an interlocutory summons requiring the official liquidator referred to in such complaint to show cause, within twenty-one days from the date of posting or serving such summons, why he should not be removed from his office; b) Upon the return of such summons the Court shall forthwith remove such official liquidator, and his office shall thereupon become and be deemed to be vacant, and he shall cease to act therein, and the Court shall forthwith appoint that the Public Trustee shall complete the winding-up of such company. The Registrar shall forthwith notify such official liquidator of such vacancy and appointment.

Property to be delivered. 6. Upon his office so becoming vacant as aforesaid such official liquidator shall, upon demand made in writing by the Public Trustee, transfer, deliver, assign, and convey to the Public Trustee all the books, papers, writings, documents, money, choses in action, and other property in the possession, custody, or control of such official liquidator by virtue of the office theretofore held by him.

Penalty on failure. 7. Any such official liquidator who shall refuse or neglect for fourteen days, or such further time as the Court may allow after such demand,

to comply with the last preceding section shall be guilty of a misdemeanour, and shall, on conviction, be liable to imprisonment for any period not exceeding three years with hard labor.

Penalty no bar to action or prosecution. 8. Neither such conviction nor his removal from office as aforesaid shall be a ground of defence for or operate to relieve any official liquidator from any civil action, other criminal prosecution, or other proceeding by or at the suit of His Majesty or any person or persons whomsoever.

Application to building societies. 9. This Act shall apply in the case of the winding-up of a building society by the Court under *The Building Societies Act, 1881*, as well as in the case of a winding-up under the principal Act.

5. Queensland.¹⁾

a) 3 Vic. No. 21. An Act to make good certain Contracts which have been or may be entered into by certain Banking and other Copartnerships (22d October, 1839). — b) 6 Vic. No. 2. An Act for further facilitating Proceedings by and against all Banking and other Companies in the Colony entitled to sue and be sued in the Name of their Chairman, Secretary, or other Officer (7th July, 1842). — c) 11 Vic. No. 19. An Act for facilitating the Winding-up of Joint Stock Companies unable to meet their Pecuniary Engagements (17th September, 1847). — d) 11 Vic. No. 56. An Act to enable any Joint Stock Company to sue any of its own Members, and to enable any Member of any such Joint Stock Company to sue any such Company, and for other Purposes (17th June, 1848).

e) 27 Vic. No. 4. An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations (1st September, 1863).

Preliminary.

1. = T. a. (33 Vic. No. 22) § 1, except: "1863" is substituted for "1869".

2. = T. a. (33 Vic. No. 22) § 3.

3. = T. a. (33 Vic. No. 22) § 4, except: throughout "in this Colony" is omitted; "of Parliament" is substituted for "of the Parliament of Tasmania".

Division of Act. 4. This Act is divided into seven Parts relating to the following subject matters. (Here follows an analysis of the Act.)

Part I. Constitution and Incorporation of Companies and Associations under this Act. Memorandum of association.

5. = N. S. W. a. (No. 40 of 1899) § 5, except: "of this Part" is omitted. — E. § 2; N. S. W. a. (No. 40 of 1899) 5; V. a. (No. 1074) 5; T. a. (33 Vic. No. 22) 6; S. A. a. (No. 557) 9; W. A. a. (56 Vic. No. 8) 9; N. Z. 13. — The word "person" includes bodies corporate or politic, if the context be applicable thereto. — *ULTRA VIRES.* — The Normandy Copper Mining Co. were indebted to their bank in the sum of £4000, secured by mortgage on their real property. The company also became indebted by way of overdrafts in the sum of £3500. Being pressed for payment the company made arrangements with Corfield to have the sum of £7500 paid to the bank, Corfield taking a mortgage on the real property for £3500, and three promissory notes aggregating £7500, signed by the directors of the company. The company becoming insolvent, Corfield sold the real estate, and received the whole of the debt of £7500 out of the proceeds, with interest. Held, the loan by Corfield was within the powers of the company, and that he could retain the whole of the amount due him; that he was in the same position as the bank; and that the payment of the £4000 not secured by mortgage was not a fraudulent preference. — *Normandy C. M. Co. v. Corfield*, 1 Q. L. J. Supp. 3. A., B., and C. handed over punts to a company in return for fully paid-up shares. About a year later the directors allowed these parties to have their punts back in consideration of the return of the shares, together with a nominal consideration. The company went into liquidation, and the liquidator sought to have A., B., and C. placed on the list of contributories. Held, there was no power under the articles of association to surrender shares, and that the transaction was *ultra vires*. But as the owners of the punts had agreed to take fully paid-up shares, they ought not to be placed on the list of contributories. — *In re Brisbane*

¹⁾ Acts a., b., c., and d. are practically obsolete.

Puntowners' Association, 5 Q. L. J. 54. A joint stock company can not sue as next friend. — In re Stewart, an infant, 5 Q. L. J. 81. For cases holding that a provision in the articles of association providing for the forfeiture of shares without previous proceedings on the part of the directors is *ultra vires*, see *Trueman v. Great Monkland Tribute Co.*, 6 Q. L. J. 112; *New, etc., Co. v. Conlan*, 10 Q. L. J. 70. Cp. also *In re Bundaberg, etc., Society* (No. 2), 9 Q. L. J. 87.

6. = T. a. (33 Vic. No. 22) § 7.

7. = T. a. (33 Vic. No. 22) § 8, except: in (2) "in which" is substituted for "where".

8. = T. a. (33 Vic. No. 22) § 9, except: in (2) "in which" is substituted for "where".

9. = T. a. (33 Vic. No. 22) § 10, except: in (2) "in which" is substituted for "where".

10. = T. a. (33 Vic. No. 22) § 11, except: "shall bear the same stamp as if it were a deed and" is omitted.

11. = T. a. (33 Vic. No. 22) § 12.

12. = T. a. (33 Vic. No. 22) § 13, except: "and Executive Council" is inserted after "Governor"; "clerk of the Council" is substituted for "Colonial Secretary".

Articles of association.

13. = T. a. (33 Vic. No. 22) § 14, except: "and may be either written or printed" is omitted.

14. = N. S. W. a. (No. 40 of 1899) § 13, except: "first Schedule" is substituted for "second Schedule".

15. = N. S. W. a. (No. 40 of 1899) § 14, except: no division into paragraphs; (3) reads as follows: "and all moneys payable by any member to the company in pursuance of the conditions and regulations of the company or any of such conditions or regulations shall be deemed to be a specialty debt due from such member to the company". — "Printed" does not include typewriting. — *In re Companies Act*, 10 Q. L. J. Note No. 52.

General provisions.

Registration of memorandum of association and articles of association. 16. The memorandum of association and the articles of association, if any, shall be delivered to the Registrar of Joint Stock Companies hereinafter mentioned and called the Registrar who shall retain and register the same. There shall be paid to the Registrar by a company having a capital divided into shares in respect of the several matters mentioned in the Table marked B in the first Schedule hereto the several fees therein specified, or such smaller fees as the Governor by the advice of the Executive Council may from time to time direct; and by a company not having a capital divided into shares in respect of the several matters mentioned in the Table marked C in the first Schedule hereto the several fees therein specified, or such smaller fees as the Governor with the advice aforesaid may from time to time direct; and all fees paid to the said Registrar in pursuance of this Act shall be paid into the Treasury of the Colony and be carried to the account of the Consolidated Fund. — E. § 15; N. S. W. a. (No. 40 of 1899) 15; V. a. (No. 1074) 16; T. a. (33 Vic. No. 22) 17; S. A. a. (No. 557) 19 (1), 250; W. A. a. (56 Vic. No. 8) 20 (1), 250; N. Z. 26 (1). See m. (No. 1307 1909) § 23.

17. = V. a. (No. 1074) § 18, except: in both instances "this Part of" is omitted; "required" is inserted before "by this Act", and omitted before "to be registered"; "certify under his hand" is substituted before "notify in the Government Gazette"; "and thereupon" is omitted before "the subscribers"; "thereupon" is inserted before "be a body corporate"; "and to sue and be sued in all courts in the colony" is inserted after "power to hold lands"; "a certificate of the incorporation of any company given by the Registrar" is substituted for "such notice".

18. = V. a. (No. 1074) § 20, except: "or such less sum as may be prescribed by the company for each copy, including such annex as aforesaid" is omitted.

19. = V. a. (No. 1074) § 21, except: throughout "Registrar" is substituted for "Registrar-General"; "in the opinion of the Registrar-General" is omitted; "in a case where such subsisting company" is substituted for "where the subsisting company"; "the" is inserted before "course of being dissolved"; "issue a certificate of incorporation" is substituted for "publish a notice of incorporation".

[§ 20 prohibits certain non-trading companies from holding land, except under certain conditions.]

Part II. Distribution of Capital and Liability of Members of Companies and Associations under this Act. Distribution of capital.

21. = V. a. (No. 1074) § 23, except: "this Part of" is omitted.

22. = T. a. (33 Vic. No. 22) § 23.

23. = V. a. (No. 1074) § 25, except: "this Part of" is omitted.

24. = T. a. (33 Vic. No. 22) § 25, except: "who shall knowingly and wilfully authorize or permit" is substituted for "who knowingly and wilfully authorizes or permits".

25. = V. a. (No. 1074) § 27, except: "this Part of" is omitted; "Registrar of Joint Stock Companies" is substituted for "Registrar-General".

26. = V. a. (No. 1074) § 28, except: "this Part of" is omitted; "Registrar" is substituted for "Registrar-General", and "the like penalty" for "a like penalty".

27. = N. S. W. a. (No. 40 of 1899) § 22, except: "under this Act" is substituted for "formed or registered under this Part of this Act"; "of Joint Stock Companies" is inserted after "Registrar".

28. = N. S. W. a. (No. 40 of 1899) § 23, except: "under this Act and" is substituted for "formed or registered under this Part of this Act"; "of this Part" is omitted after "provisions".

29. = N. S. W. a. (No. 40 of 1899) § 237.

30. = N. S. W. a. (No. 40 of 1899) § 238, except: "share or" is inserted before "shares" in both instances; "a company" is substituted for "any company".

31. = V. a. (No. 1074) § 33, except: "and" is omitted before "except when closed"; "it" is inserted before "shall during business hours"; "shall knowingly authorize or permit" is substituted for "knowingly and wilfully authorizes or permits".

Power to close register. 32. Any company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year. — E. § 31; N. S. W. a. (No. 40 of 1899) 240; V. a. (No. 1074) 34; T. a. (33 Vic. No. 22) 35; S. A. a. (No. 557) 34; W. A. a. (56 Vic. No. 8) 35; N. Z. 105.

33. = T. a. (33 Vic. No. 22) § 36, except: "who shall knowingly and wilfully authorize or permit" is substituted for "who knowingly and wilfully authorizes or permits". — See m. (No. 1307 1909) § 22.

34. = V. a. (No. 1074) § 36, except: the beginning word is "if" instead of "when"; "this Part of" is omitted before "this Act"; "if" is substituted for "when" before "default is made"; "of the Court" is inserted before "that the register may be rectified"; "it" is inserted before "may if satisfied"; "such a motion, application, or petition" is substituted for "such motion or application"; "or Judge" is omitted before "may in any proceeding"; "the Court" is inserted between "generally" and "may in any such proceeding"; "provided that the Court may direct an issue to be tried on the trial of which any question of law may be raised for the decision of the Supreme Court" is substituted for all words from "and may direct an issue" to the end of the section. — E. § 32; N. S. W. a. (No. 40 of 1899) 232 (1—3); V. a. (No. 1074) 36; T. a. (33 Vic. No. 22) 37; S. A. a. (No. 557) 35; W. A. a. (56 Vic. No. 8) 36; N. Z. 106, 107. — Where the articles of association empower the directors to refuse to register a transfer on the ground of the undesirability of the transferee as a member, and application is made for entry by a transferee, the power of refusal must be exercised within a reasonable time. — *In re Queensland Mines Agency*, 10 Q. L. J. 52, 75. Where a company as organised differs from the prospectus a person who has subscribed for shares on the basis of the prospectus is entitled to have his name removed from the register. — *In re Fresh Food, etc., Co.*, (1903) S. R. (Q.) 162. *Semble*, even after winding-up proceedings are begun. — *Ibid.* But the right of rescission may be lost by *laches*. — *Ibid.*

35. = V. a. (No. 1074) § 37, except: the beginning word is "whenever" instead of "when"; "Registrar" is substituted for "Registrar-General".

36. = V. a. (No. 1074) § 38, except: "any matters" is substituted for "all matters"; "this Part of" is omitted.

Liability of members.

37. = N. S. W. a. (No. 40 of 1899) § 33, except: in the opening paragraph "formed under this Act" is substituted for "formed or registered under this Part of this Act", and "contributors" is substituted for "contributories"; in (a) "to the

assets of the company" is inserted after "contribute"; in (c) "to the assets of the company" is inserted after "contribute", and "or other authority, in, by, or under which the company is being wound up" is omitted; in (e) "contribution" is substituted for "contributions".

Part III. Management and Administration of Companies and Associations under this Act. Provisions for protection of creditors.

38—39. = T. a. (33 Vic. No. 22) § 43—44.

40. = V. a. (No. 1074) § 41, except: "this Part of" is omitted.

41. = V. a. (No. 1074) § 42, except: "this Part of" is omitted in both places; "shall knowingly and wilfully authorize and permit" is substituted for "who knowingly and wilfully authorizes or permits"; "or" is omitted before "advertisement". — As to the nature of the action, see *Hill v. Pinnock*, 1 Q. L. J. Supp. 45.

[§ 42 is repealed.]

[§ 43 relates to statements to be made by banking, insurance, benefit provident, and deposit companies or societies.]

44. = N. S. W. a. (No. 40 of 1899) § 70, except: "this Part of" is omitted; "Registrar of Joint Stock Companies a copy" is substituted for "Registrar a copy".

45. = V. a. (No. 1074) § 46, except: "this Part of" is omitted.

46. = V. a. (No. 1074) § 48, except: "this Part of" is omitted; "in the name of any company" is substituted for "on behalf of any company".

47. = N. S. W. a. (No. 40 of 1899) § 241, except: throughout "if made between private persons" is omitted; in (1) "and under seal" is omitted; "signed by the parties" is substituted for "signed by the party"; "expressed" is substituted for "express"; in (3) the sentence beginning with "and all contracts" to the end of the section is omitted.

§ 48. Prohibition against carrying on business with less than seven members. 48. If any company under this Act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person, who is a member of such company during the time it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time and may be sued for the same without the joinder in the action or suit of any other member. — A sale by a member of his shares to another member is valid although the number of shareholders is thereby reduced to six. — *Walsh v. Stephens*, 3 S. C. R. (Q.) 98.

Provisions for protection of members.

49. = N. S. W. a. (No. 40 of 1899) § 246, except: "registered" is omitted; "the" is inserted before "least".

50. = N. S. W. a. (No. 40 of 1899) § 72, except: "this Part of" is omitted; "in manner hereinafter mentioned" is inserted after "special resolution"; "first Schedule" is substituted for "second Schedule"; "and" is inserted before "any regulations so made".

51. = N. S. W. a. (No. 40 of 1899) § 247, except: "registered" is omitted before "under this Act"; throughout "rules or" is omitted before "regulations".

52. = V. a. (No. 1074) § 53, except: "first Schedule" is substituted for "second Schedule"; "shall be competent to summon" for "may summon", "default of any regulation" for "default of any regulations", and "it shall be competent for any person elected by the members present to preside" for the sentence beginning with "any person elected by the members".

53. = V. a. (No. 1074) § 54, except: "a copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the Registrar of Joint Stock Companies, and be recorded by him" is substituted for the words from "when any special resolution" to "be recorded by him"; "shall knowingly or wilfully authorize or permit such default shall incur the like penalty" is substituted for everything from "knowingly and wilfully authorizes" to the end of the section.

54. = N. S. W. a. (No. 40 of 1899) § 250, except: no division into paragraphs; throughout "or rules" is omitted after "articles of association"; "that may be issued" is substituted for "which may be issued"; in (2) "in print" is omitted; for (3) the

following is substituted: "and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty".

55. = V. a. (No. 1074) § 56, except: "this Part of" is omitted; "the Colony" is substituted for "Victoria". — See f. (53 Vic. No. 18) § 36—41, *infra*.

56. = N. S. W. a. (No. 40 of 1899) § 252, except: "with the advice of the Executive Council" is inserted before "may appoint"; "competent" is inserted before "inspectors"; "registered" is omitted; "in Council" is inserted before "may direct".

57. = N. S. W. a. (No. 40 of 1899) § 253, except: no division into paragraphs; in (1) "and Executive Council" is inserted after "Governor"; in (2) "in Council" is inserted after "Governor"; "costs" is substituted for "cost"; "or inspectors" is inserted after "inspector".

58. = N. S. W. a. (No. 40 of 1899) § 254, except: no division into paragraphs; "it shall be the duty of all" is inserted before "officers"; "to produce" is substituted for "shall produce".

59. = N. S. W. a. (No. 40 of 1899) § 255, except: no division into paragraphs; in (1) "in Council" is inserted after "Governor" in each instance; in (2) "of such report" is omitted after "a copy"; "unless the Governor by the advice of the Executive Council shall direct the same to be paid out of the assets of the company which it is hereby authorized to do" is substituted for everything from "provided that the Governor" to "by process of law".

60. = N. S. W. a. (No. 40 of 1899) § 256, except: no division into paragraphs; "registered" is omitted; "Governor with the advice of the Executive Council with this exception that instead" is substituted for "Governor but instead"; "in Council" is inserted before "they shall make"; "and" is inserted before (2); "with the advice aforesaid" is inserted at the end of the section.

61. = N. S. W. a. (No. 40 of 1899) § 257, except: "proceeding" is substituted for "proceedings".

Notices.

62. = V. a. (No. 1074) § 163, except: "required to be served" is substituted for "requiring to be served".

63—64. = V. a. (No. 1074) § 64—65.

Legal proceedings.

65. = N. S. W. a. (No. 40 of 1899) § 258, except: "of the peace" is omitted; after "justices" the following is inserted, "in manner directed by an Act eleven and twelve Victoria, chapter forty-three entitled *An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders, or any Act amending the same*". — The Act mentioned has been repealed by the *Justices Act of 1886* (50 Vic. No. 17) § 2.

Application of penalties. 66. The justices imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered, and subject to such direction all penalties shall be paid into the Treasury and shall be carried to and form part of the Consolidated Fund of the Colony. — *Cp. Hill v. Pincock*, 1 Q. L. J. Supp. 45.

67. = N. S. W. a. (No. 40 of 1899) § 260, except: no division into paragraphs; "registered" is omitted; "and" is omitted at the beginning of (2), (3), and (4); "qualifications" is substituted for "qualification".

68. = N. S. W. a. (No. 40 of 1899) § 259, except: "or no-liability" is omitted; "legal proceeding" is substituted for "legal proceedings"; "by any credible testimony" is inserted after "if it appears". — *Cp. Rogers v. MacPherson & Rogers*, (1904) S. R. (Q.) Note No. 32.

69. = N. S. W. a. (No. 40 of 1899) § 73, except: "the company" is substituted for "a company"; and "hath accrued" for "has accrued".

Alteration of forms.

[§ 70 empowers the Governor with the advice of the Executive Council to alter the forms contained in the first Schedule.]

Arbitrations.

71. = N. S. W. a. (No. 40 of 1899) § 75, except: no division into paragraphs; "under this Act" is substituted for "registered under this Part of this Act"; "*The Railway Companies Arbitration Act, 1859*" is substituted for "the provisions of the *Arbitration Act, 1892*, or any Act amending or consolidating the same"; "and the companies parties" is substituted for "the parties"; "person or" is inserted before "persons"; "the companies" is inserted before "themselves"; "the directors" is substituted for "their directors"; "of such company" is inserted after "managing body".

[§ 72 makes the provisions of *The Railway Companies Arbitration Act, 1859*, applicable to arbitrations where companies are parties.]

*Part IV. Winding-up of Companies and Associations under this Act.*¹⁾

73. = N. S. W. a. (No. 40 of 1899) § 79 (1), except: "this Part of" is omitted; "it shall" is substituted for "and shall" and "such persons" for "such proceedings". — E. § 124; N. S. W. a. (No. 40 of 1899) 79 (1); V. a. (No. 1074) 71; T. a. (33 Vic. No. 22) 106; S. A. a. (No. 557) 3; W. A. a. (56 Vic. No. 8) 3; N. Z. 173. — Foreign creditors are entitled to share with domestic creditors in the distribution of assets. — *In re Bank of Queensland*, 1 S. C. R. (Q.) 159. — Where a foreign company is carrying on business in Queensland, and has a representative here, the assets in this Colony must be administered here. — *In re Colorado S. M. Co.*, 2 Q. L. J. 21. Where a judgment has been obtained in Queensland against a limited company registered in England, and a writ of *fieri facias* has issued, but before the levy upon lands of the company was made an order for the winding-up of the company was made by the English Court, it was held that the Queensland Court would not restrain the judgment creditor from proceeding under the writ. — *Central, etc., Co. v. Bury*, 4 S. C. R. (Q.) 168; Q. L. R. (Beor Pt. I.), 16.

74. = V. a. (No. 1074) § 72, except: "this Part of" is omitted; "a debt of the nature of a specialty wherein the heirs are bound" is substituted for "a specialty debt"; "liability to future calls" is substituted for "liabilities to future calls"; "the" is inserted before "case of the insolvency".

75. = V. a. (No. 1074) § 73, except: the beginning word is "if" instead of "where".

76. = N. S. W. a. (No. 40 of 1899) § 82, except: "or person deemed to be a contributory" is omitted; throughout "insolvent" is substituted for "bankrupt", "assignees" for "assignee or trustee", and "bankrupt" for "contributory" after "represent such"; "contributories accordingly" is substituted for "a contributory accordingly".

77. = N. S. W. a. (No. 40 of 1899) § 83, except: "or female deemed to be a contributory" is omitted.

Winding-up by Court.

78. = V. a. (No. 1074) § 76, except: in introductory paragraph "this Part of" is omitted; "as hereinafter defined" is inserted after "by the Court"; throughout the beginning word of the sub-sections is "whenever" instead of "when"; "seven" is substituted for "five".

79. = N. S. W. a. (No. 40 of 1899) § 86 (a—c), except: the introductory paragraph is as follows: "A company under this Act shall be deemed to be unable to pay its debts"; in (b) "at law or in equity" is inserted before "in any proceeding".

80. = T. a. (33 Vic. No. 22) § 113, except: "in this fourth Part" is substituted for "in this Part".

81. = V. a. (No. 1074) § 78, except: "this Part of" is omitted; "petition and such petition may be presented by" is substituted for "petition presented either by"; "any" is inserted before "one or more"; "on any such petition" is substituted for "upon any such petition"; the sentence beginning with "and any Judge" to the end of the section is omitted.

Power of Equity Judge in chambers. 82. The Equity Judge of the Supreme Court may do in chambers any act which the Court is hereby authorized to do.

83. = N. S. W. a. (No. 40 of 1899) § 91, except: "of a company" is inserted after "a winding-up".

84. = V. a. (No. 1074) § 80, except: "this Part of" is omitted; "the Court" is substituted for "and" after "the Court thinks fit"; "appointment" is substituted for "nomination", and "appoint" for "nominate".

¹⁾ See also h. (56 Vic. No. 24), i. (57 Vic. No. 3) and j. (60 Vic. No. 21).

85. = N. S. W. a. (No. 40 of 1899) § 93.

86. = V. a. (No. 1074) § 82, except: "this Part of" is omitted; "proceeded with" is substituted for "continued". — In a voluntary winding-up leave to continue an action is not necessary. — In re Australian, etc., Co., Harding, *Company Law*, h. 1.

87. = N. S. W. a. (No. 40 of 1899) § 96, except: "for winding-up a company under this Act" is substituted for "under this Part of this Act for winding-up a company"; "Registrar of Joint Stock Companies" is substituted for "Registrar".

88. = N. S. W. a. (No. 40 of 1899) § 97, except: "by motion" is inserted after "application"; "contributory of the company" is substituted for "contributory of such company". — E. § 144; N. S. W. a. (No. 40 of 1899) 97; V. a. (No. 1074) 84; T. a. (33 Vic. No. 22) 122; S. A. a. (No. 557) 149; W. A. a. (56 Vic. No. 8) 116; N. Z. 184. — Where it appeared that certain contributories had not assented to the application for the winding-up, it was ordered that notice should be sent to each, and the application advertised in the newspapers. — In re Bank of Queensland, 2 S. C. R. (Q.) 113.

89. = N. S. W. a. (No. 40 of 1899) § 99, except: "wherein the heirs are bound" is inserted after "specialty".

90. = N. S. W. a. (No. 40 of 1899) § 100, except: no division into paragraphs.

Official liquidators.

91. = N. S. W. a. (No. 40 of 1899) § 101, except: no division into paragraphs; (1) reads as follows: "for the purpose of conducting the proceedings in winding up a company and assisting the Court therein there may be appointed a person or persons to be called an official liquidator or official liquidators, and the Court may appoint such person or persons either provisionally or otherwise as it thinks fit to the office of official liquidator or official liquidators"; in (4) "being wound up" is omitted.

92. = N. S. W. a. (No. 40 of 1899) § 102, except: no division into paragraphs.

Style and duties of official liquidator. 93. The official liquidator or liquidators shall be described by the style of the official liquidator or official liquidators of the particular company in respect of which he is or they are appointed and not by his or their individual name or names. He or they shall take into his or their custody or under his or their control all the property, effects, and choses in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as may be imposed by the Court. — E. § 149; N. S. W. a. (No. 40 of 1899) 103; V. a. (No. 1074) 89; T. a. (33 Vic. No. 22) 127; S. A. a. (No. 557) 116; W. A. a. (56 Vic. No. 8) 119; N. Z. 192.

94. = N. S. W. a. (No. 40 of 1899) § 104, except: "to do the following things" is inserted after "sanction of the Court"; throughout "to" is inserted before each of the sub-sections, which are not lettered; in (a) "civil or criminal" is inserted after "proceeding"; in (c) "choses in action" is substituted for "things in action"; in (d) "to" is inserted before "execute" and "agreements of reference or submissions to arbitration" is omitted; in (e) "bankruptcy or" is omitted in both instances, "to" is inserted before "take and receive", and "bankrupt or" is omitted; in (f) "also to raise" is substituted for "and raise" and "from time to time any requisite sum or sums of money" for "any requisite sums of money"; "the" is substituted for "such" after "on behalf of"; in (g) "and to do in his official name any other act that" is substituted for "and do in his official name such other acts as"; "which act" is inserted between "and" and "cannot be conveniently done".

95—96. = N. S. W. a. (No. 40 of 1899) § 105—106.

Ordinary powers of court.

97. = N. S. W. a. (No. 40 of 1899) § 107, except: "the company" is substituted for "a company"; "this Part of" is omitted; "and shall cause" is substituted for "and cause".

98. = N. S. W. a. (No. 40 of 1899) § 108, except: no division into paragraphs; "liable to" is substituted for "liable for".

99. = N. S. W. a. (No. 49 of 1899) § 109, except: "or into the hands of" is inserted after "the Court directs to".

100. = N. S. W. a. (No. 40 of 1899) § 110, except: no division into paragraphs; in both instances "the company" is substituted for "a company"; "the estate of the person whom he represents" is substituted for "such estate"; "of this Division" is omitted; "and it may" is inserted before "in making"; "the Court may" is omitted

before "allow to such contributory"; in (3) "provided that" is inserted before "when", and "call or" before "calls". — E. § 165; N. S. W. a. (No. 40 of 1899) 110; V. a. (No. 1074) 96; T. a. (33 Vic. No. 22) 134; S. A. a. (No. 557) 122; W. A. a. (56 Vic. No. 8) 125; N. Z. 199 (b). — A shareholder in a limited company, who is also a creditor of the company, which is being wound up by the Court, is not entitled to set-off the debt due to him against the calls. — *In re North Queensland, etc., Co.*, (1902) S. R. (Q.) 286. The obligation to pay for shares may be discharged by payment or its equivalent, and the discharge may be shown by matters antecedent, concurrent, or subsequent, so long as the company received the benefit of the transaction. The transfer of an interest in land was held a sufficient equivalent. — *In re Mount Clara C. M. Co.* 4 S. C. R. (Q.) 112. Bona fide purchasers for value, and without notice, of shares in a company which the company represents to be fully paid-up, and which so appear on the company's books, can not be settled on the list of contributories, although such shares were in fact not paid-up. — *In re Normandy C. M. Co.*, 4 S. C. R. (Q.) 223; Q. L. R. (Beor, Pt. I.) 18. To the same effect, *In re Darling Downs Brewery*, 9 Q. L. J. 222. Cp. *In re Darling Downs Brewery*, 9 Q. L. J. 225; *In re Bundaberg, etc., Society*, 9 Q. L. J. 77.

101. = N. S. W. a. (No. 40 of 1899) § 111, except: no division into paragraphs; "to the extent of their liability" is inserted after "payment thereof", and omitted before "for payment"; in (b) "and" is substituted for "to satisfy"; "winding it up" is substituted for "winding-up"; in (2) "and it" is substituted for "the Court".

102. = N. S. W. a. (No. 40 of 1899) § 112, except: "being wound up" is omitted.

103. = N. S. W. a. (No. 40 of 1899) § 113, except: "in the event of a company being wound up by the Court" is inserted after "such bank".

104. = N. S. W. a. (No. 40 of 1899) § 114.

105. = N. S. W. a. (No. 40 of 1899) § 115, except: "this Part of" is omitted; the following is inserted after "whatsoever": "with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *prima facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made".

106. = N. S. W. a. (No. 40 of 1899) § 116, except: "being wound up" is omitted after "company".

107. = N. S. W. a. (No. 40 of 1899) § 117. — Cp. *In re Rockhampton Prospecting Co.*, (1905) S. R. (Q.) 64.

108. = N. S. W. a. (No. 40 of 1899) § 118, except: "being wound up" is omitted after "the company"; "any company" is inserted after "winding-up"; "of priority" is substituted for "or priority". — Cp. *In re Puntowners' Association* 6 Q. L. J. 30.

109. = N. S. W. a. (No. 40 of 1899) § 119, except: "the company be dissolved" is substituted for "such company be dissolved".

110. = N. S. W. a. (No. 40 of 1899) § 120.

111. = N. S. W. a. (No. 40 of 1899) § 121, except: "of a company being wound up by the Court" is substituted for "of a winding-up by the Court".

Extraordinary powers of Court.

112. = N. S. W. a. (No. 40 of 1899) § 123, except: no division into paragraphs; in (1) "the company" is substituted for "a company"; in (1) (b) "any" is omitted before "person"; "the Court" is inserted before "may require" in (2) "and" is inserted before "if any person"; in (3) "nevertheless" is inserted before "in cases", and "or" before "writing". — Cp. *North Queensland, etc., Co.*, (1902) S. R. (Q.) 285.

113. = N. S. W. a. (No. 40 of 1899) § 124, except: "by word of mouth" is substituted for "orally".

114. = N. S. W. a. (No. 40 of 1899) § 125, except: "to such company" is inserted after "contributory"; "the Colony" is substituted for "New South Wales".

115. = N. S. W. a. (No. 40 of 1899) § 126, except: "this Part of" is omitted

Enforcement of and appeal from orders.

116. = N. S. W. a. (No. 40 of 1899) § 127, except: "this Part of" is omitted; "Supreme Court" is substituted for "Court"; "in its equity jurisdiction" is inserted after "pending therein".

117. = T. a. (33 Vic. No. 22) § 152, except: "and appeals from" is inserted after "rehearings of"; "which appeals" is substituted for "which rehearings"; "from any order" is substituted for "of any order"; "the Equity Judge of the Supreme Court in cases within his ordinary jurisdiction" is substituted for "the Court in cases within its equity jurisdiction"; "such rehearing or appeal shall be heard"

is substituted for "such rehearing shall be had"; "appeal" is substituted for "petitions for rehearings"; "of Appeal" is inserted at the end of the section.

118. = T. a. (33 Vic. No. 22) § 155, except: "in this Colony or in any other Colony or" is omitted before "in Great Britain"; "Colony" is inserted before "Island, Plantation"; "in foreign parts" is omitted after "Her Majesty".

Voluntary winding-up of company.

119. = V. a. (No. 1074) § 114—115, except: "whenever" is throughout substituted for "when"; "their satisfaction" is substituted for "its satisfaction"; "this Part of" is omitted.

120. = N. S. W. a. (No. 40 of 1899) § 131.

121. = N. S. W. a. (No. 40 of 1899) § 132, except: no division into paragraphs; "and" is inserted before "all transfers"; "but its corporate state and all its corporate powers shall" is substituted for "the corporate state and all the corporate powers of such company shall". — See f. (53 Vic. No. 18) § 7, *infra*.

122. = N. S. W. a. (No. 40 of 1899) § 133, except: "Government Gazette" is substituted for "Gazette".

123. = N. S. W. a. (No. 40 of 1899) § 134, except: (c) reads as follows: "The company in general meeting shall appoint such person¹) or person as it thinks fit to be liquidators or a liquidator, and may fix their remuneration to be paid to them or him"; in (e) "all the power"²) is substituted for "all the powers"; in (g) "this Part of" is omitted.

124. = N. S. W. a. (No. 40 of 1899) § 135, except: "wherein the heirs are bound" is inserted after "specialty debt".

125. = N. S. W. a. (No. 40 of 1899) § 136, except: no division into paragraphs; "wound up voluntarily" is inserted after "about to be"; "may by a like resolution" is inserted before "enter into"; "and" is inserted before "any act done".

126. = N. S. W. a. (No. 40 of 1899) § 159 (1), except: "wound up voluntarily" is inserted after "about to be"; "subject to such right of appeal as is hereinafter mentioned" is inserted after "value of the creditors". — E. § 191; N. S. W. a. (No. 40 of 1899) 159 (1); V. a. (No. 1074) 122; T. a. (33 Vic. No. 22) 163, 144; c. (59 Vic. No. 19) 19; S. A. a. (No. 557) 139; W. A. a. (56 Vic. No. 8) 143; N. Z. 260. — On the failure of the company to carry out the scheme of arrangement, the creditors bound by the scheme are remitted to their original rights, and may, in the subsequent liquidation, prove for the full amount of their original claims, deducting any amounts received under the scheme. — In re Alfred Shaw & Co., 8 Q. L. J. 48.

127. = N. S. W. a. (No. 40 of 1899) § 159 (2), except: "in manner aforesaid" is inserted after "company that has"; "such" is omitted before "arrangement with its creditors".

128. = N. S. W. a. (No. 40 of 1899) § 137, except: no division into paragraphs; "and" is inserted before "the Court if satisfied".

129. = N. S. W. a. (No. 40 of 1899) § 138, except: no division into paragraphs; "from time to time" is inserted after "liquidators may"; "and" is inserted before "in the event of the winding-up".

130. = N. S. W. a. (No. 40 of 1899) § 139, except: no division into paragraphs; in (2) "and" is inserted before "a general meeting"; "liquidator" is substituted for "liquidators" in the second instance. — Cp. In re Aplin, Brown & Co., (1902) S. R. (Q.) 67.

131. = N. S. W. a. (No. 40 of 1899) § 140, except: no division into paragraphs; "or liquidators" is inserted after "appoint a liquidator". — Application for removal directed to be by summons. — In re Parbury, etc., Harding, *Company Law*, h. 1.

132. = N. S. W. a. (No. 40 of 1899) § 141, except: no division into paragraphs; "Government Gazette" is substituted for "Gazette"; "published in the Colonies" is substituted for "circulating in the district in which the registered office of the company is situated".

133. = N. S. W. a. (No. 40 of 1899) § 142, except: no division into paragraphs; "and" is inserted before "on the expiration" and before "if the liquidators".

134. = N. S. W. a. (No. 40 of 1899) § 143.

135. = N. S. W. a. (No. 40 of 1899) § 144, except: "of such company" is inserted after "any creditor".

136. = N. S. W. a. (No. 40 of 1899) § 145, except: "if it thinks fit" is inserted after "Court may".

¹) *Sic*; obviously "persons" — ²) *Sic*; probably "powers".

Winding-up subject to the supervision of the Court.

137. = N. S. W. a. (No. 40 of 1899) § 146.

138. = N. S. W. a. (No. 40 of 1899) § 147, except: "subject to" is substituted for "under" after "winding up".

139. = N. S. W. a. (No. 40 of 1899) § 148, except: no division into paragraphs; "subject to" is substituted for "under" in both instances; "a liquidator or" is inserted after "appointment of"; in (2) "and" is substituted for "the Court".

140. = N. S. W. a. (No. 40 of 1899) § 149, except: no division into paragraphs; "subject to" is substituted for "under"; "liquidator or" is inserted after "additional"; in (2) "and" is inserted before "in the case".

141. = N. S. W. a. (No. 40 of 1899) § 150, except: no division into paragraphs; in (1) and in (2) "subject to" is substituted for "under"; "but" is inserted at beginning of (2); "and" is inserted before (3); in (3) "mean" is substituted for "include".

142. = N. S. W. a. (No. 40 of 1899) § 151, except: "subject to" is substituted for "under".

Supplemental provisions.

143. = N. S. W. a. (No. 40 of 1899) § 152, except: "any company" is substituted for "a company"; "subject to" is substituted for "under"; in both instances "the company" is substituted for "such company".

144. = N. S. W. a. (No. 40 of 1899) § 153, except: "any company" is substituted for "a company".

145. = N. S. W. a. (No. 40 of 1899) § 154, except: no division into paragraphs; "any company" is substituted for "a company", and "the company" for "such company" in all instances; in (a) "subject to" is substituted for "under"; "but" is inserted before (2); in (2) "or parties" is inserted after "any party".

146. = V. a. (No. 1074) § 141.

147. = N. S. W. a. (No. 40 of 1899) § 156, except: in both instances "choses" is substituted for "thing"; "the company" is substituted for "a company"; "this Part of" is omitted.

148. = N. S. W. a. (No. 40 of 1899) § 157, except: "any company" is substituted for "a company"; "this Part of" is omitted; "the company" is substituted for "such company"; "as" is inserted before "admissible"; "as is possible" is substituted for "as it is possible".

149. = N. S. W. a. (No. 40 of 1899) § 158, except: in all instances "the company" is substituted for "a company" and for "such company"; "by the Court or subject to" is substituted for "by or under".

150. = N. S. W. a. (No. 40 of 1899) § 161, except: no division into paragraphs; "where the company is being wound up by the Court or subject to" is substituted for "in the case of a winding-up by or under"; "the company" is substituted for "a company"; throughout "the company" is substituted for "such company"; "of the company" is substituted for "thereof"; "with power for the liquidators" is substituted for "the liquidators may"; in (3) "to" is inserted before "give complete discharges". — E. § 214; N. S. W. a. (No. 40 of 1899) 161; V. a. (No. 1074) 145; T. a. (33 Vic. No. 22) 188; S. A. a. (No. 557) 172; W. A. a. (56 Vic. No. 8) 174; N. Z. 258. — The compromise must be sanctioned by an extraordinary resolution. Where a compromise is set up as a defence it devolves on the defendant to show compliance with the statutory conditions. — *Rendall v. Conroy*, 8 Q. L. J. 89.

151. = N. S. W. a. (No. 40 of 1899) § 261, except: no division into paragraphs; throughout "liquidators" is substituted for "liquidator"; throughout "debentures" is omitted; in (1) "they were appointed" is substituted for "he was appointed"; "may" is inserted before "enter"; in (2) "and" is inserted before "any sale"; "subject to this proviso that" is substituted for "subject to the provisions hereinafter contained"; in (3) "or one of them" is inserted before "and left at the registered office"; "either to" is inserted before "abstain" and "to" before "purchased"; in (4) "a" is inserted after "for appointing"; "under Part I of this Act" is omitted.

152. = N. S. W. a. (No. 40 of 1899) § 262, except: all of the sentence beginning with "under and in accordance" is omitted.

Arbitration. 153. When any question of disputed purchase money by this Act authorized or required to be settled by arbitration shall have arisen then, unless both parties shall concur in the appointment of a single arbitrator, each party on the request of the other party shall nominate and appoint an arbitrator to whom such dispute shall be referred; and every appointment of an arbitrator shall be made

on the part of the company under the hand of the liquidator if only one, or any two or more of the liquidators if more than one, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of twenty-one days after any such dispute shall have arisen, and after a request in writing in which shall be stated the matter so required to be referred to arbitration shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator then upon such failure the party making the request and having himself appointed an arbitrator may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final and the arbitrators so to be appointed shall before proceeding to such arbitration appoint an umpire.

154. = T. a. (33 Vic. No. 22) § 192, except: "matter so referred shall be determined" is substituted for "matters so referred are determined"; "die or become incapable the party" is substituted for "dies or becomes incapable, or refuses, or for seven days neglects to act as arbitrator the party"; "refusal" is omitted before "or disability as aforesaid".

On death of a single arbitrator matter to be determined de novo. 155. If where a single arbitrator shall have been appointed such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this Act in the same manner as if such arbitrator had not been appointed.

Arbitrator may proceed ex parte. 156. If where more than one arbitrator shall have been appointed either of the arbitrators refuse, or for fourteen days neglect, to act, the other arbitrator may proceed ex parte, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

Umpire may decide on arbitrators' default. 157. If where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Production of documents. 158. The said arbitrators, or their umpire, may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath and administer the oaths necessary for that purpose.

Oath of arbitrators or umpire. 159. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall in the presence of a Justice make and subscribe the following declaration (that is to say) "I, A. B., do solemnly and sincerely declare that I will faithfully and honestly and to the best of my skill and ability hear and determine the matters referred to me under the provisions of *The Companies Act, 1863*. A. B. Made and subscribed in the presence of..."

Costs of arbitration. 160. All the costs of any such arbitration and incident thereto to be settled by the arbitrators shall be borne by the company unless the arbitrators shall award the same or a less sum than shall have been offered by the company, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions.

Award. 161. The arbitrators shall deliver their award in writing to the company, and the said company shall retain the same and shall forthwith on demand at their own expense furnish a copy thereof to the other party to the arbitration, and shall at all times on demand produce the said award and allow the same to be inspected or examined by such party or any person appointed by him for that purpose.

162. = T. a. (33 Vic. No. 22) § 197, except: "of the parties" is substituted for "party".

Not to be set aside for error in form. 163. No award made with respect to any question referred to arbitration under the provisions of this Act shall be set aside for irregularity or error in matter of form.

164. = N. S. W. a. (No. 40 of 1899) § 95, except: "subject to" is substituted for "under", and "the company" for "such company".

165. = V. a. (No. 1074) § 151, except: "individual" is substituted for "individual person"; "of his creditors" is substituted for "of the creditors of such person"; in both instances "this Part of" is omitted; "the" is omitted before "case". — Cp. Normandy C. M. Co. v. Corfield, in note to § 5, *supra*.

166. = N. S. W. a. (No. 40 of 1899) § 162, except: "the winding-up of any company under this Act" is substituted for "a winding-up"; in the first instance "official or other" is inserted before "liquidator"; "of such company" is substituted for "of the company being wound up"; "or of any" is inserted before "creditor".

[§ 167 is repealed.]

168. = V. a. (No. 1074) § 154, except: "and conduct" is omitted after "institute".

169. = V. a. (No. 1074) § 155, except: "it shall be lawful for the liquidators" is substituted for "the liquidators may"; "to" is inserted before "prosecute".

[§ 170 is repealed.]

Power of Court to make rules.

[§ 171 empowers the Judges of the Supreme Court to make rules concerning the mode of proceeding in winding-up cases.]

Part V. Constitution of Registration Office.

[§ 172 relates to the organization of the Registration Office, and provides for the inspection of documents kept by the Registrar.]

Part VI. Companies authorized to register under this Act.

173. = V. a. (No. 1074) § 159, except: "this Division of" is omitted after "under" in opening paragraph and after "pursuance of" in (3); "this Part of" is omitted (1), (3), and (4); "Part thereof" is substituted for "Division thereof" in (1), (2), and (4); in (6) the beginning word is "where" instead of "when", and "payment" is substituted for "payments".

174. = N. S. W. a. (No. 40 of 1899) § 168, except: no division into paragraphs; "with the above exceptions and subject to the foregoing regulations" is substituted for "subject as aforesaid"; "at the time of the commencement" is substituted for "at the passing"; "or of Letters Patent" is substituted for "Royal Charter or Letters Patent"; "this Part of" is omitted; in (2) "and" is inserted before "no such regulations".

175. = N. S. W. a. (No. 40 of 1899) § 169, except: no division into paragraphs; "of this Division" is omitted; "so far as the same relates to the description of companies empowered to register as companies limited by shares" is inserted before "a joint stock"; "and" is inserted before (2); in (2) "this Part of" is omitted.

[§ 176 is repealed. Cp. f. (53 Vic. No. 18) § 22, *infra*.]

177. = N. S. W. a. (No. 40 of 1899) § 171, except: "of this Division" is omitted; "copartnery" is substituted for "copartnership"; "and also" is inserted before "if any such joint stock company"; "the above list and copy shall be accompanied by" is inserted between "limited company" and "a statement".

178. = N. S. W. a. (No. 40 of 1899) § 172, except: "of this Division" and "Royal Charter" are omitted; "copartnery" is substituted for "copartnership".

179. = N. S. W. a. (No. 40 of 1899) § 173, except: "this Part of" is omitted.

180. = N. S. W. a. (No. 40 of 1899) § 174, except: "statutory" is omitted; "made in pursuance of the Acts five and six William IV. chapter sixty-two and nine Victoria number nine" is inserted at the end of the section. — 9 Vic. No. 9 is repealed.

181. = N. S. W. a. (No. 40 of 1899) § 175, except: "is" is omitted before "not".

182. = N. S. W. a. (No. 40 of 1899) § 176, except: no division into paragraphs; "the date of" is inserted before "the passing of"; "and" is inserted before (2) and (3);

in (2) "as a prepaid letter" is omitted; "to" is inserted after "communicated"; "to or" is inserted after "their address"; in (3) "person or" is inserted before "persons"; "shall be given" is substituted for "is given".

183. = N. S. W. a. (No. 40 of 1899) § 177, except: "of any company" is omitted after "registration" and inserted after "this Act"; "of this Division" and "Royal Charter or" are omitted.

184. = N. S. W. a. (No. 40 of 1899) § 178, except: the beginning word is "any" instead of "a"; "this Division of" is omitted.

185. = N. S. W. a. (No. 40 of 1899) § 179, except: no division into paragraphs; "this Division of" is omitted; "Tables marked B and C in the first Schedule" is substituted for "Table marked B in the second Schedule"; "this Part of" is omitted in the second instance; "and" is inserted before "thereupon".

186. = N. S. W. a. (No. 40 of 1899) § 180, except: no division into paragraphs; "of this Division" is omitted throughout; "this Part of" is omitted after "registration under" and after "registered under"; in (2) "and" is inserted before "the date of incorporation".

187. = V. a. (No. 1074) § 173, except: in both instances "this Part of" is omitted.

188. = N. S. W. a. (No. 40 of 1899) § 182, except: "of this Division" is omitted.

189. = N. S. W. a. (No. 40 of 1899) § 183, except: no division into paragraphs; "of this Division" is omitted; "nevertheless" is inserted before "execution shall not issue".

190. = V. a. (No. 1074) § 176, except: throughout "this Part of" is omitted; in introductory paragraph "contract of copartnery" is inserted after "deed of settlement"; in introductory paragraph, in (1), and in concluding paragraph "Part thereof" is substituted for "Division thereof"; in (1) "first Schedule" is substituted for "second Schedule"; in (4) "Governor and Executive Council" is substituted for "Governor in Council"; in (5) "at law or in equity" is inserted after "who is liable".

— See f. (53 Vic. No. 18) § 50, *infra*.

191—192. = T. a. (33 Vic. No. 22) § 228—229.

Part VIII.¹⁾ Application of Act to unregistered Companies.

193. = V. a. (No. 1074) § 183, except; throughout "this Part of" is omitted; "except railway or tramway companies incorporated by Act of Parliament" is inserted before "consisting of more"; "seven" is substituted for "five"; "this Act and all the provisions of this Act" is substituted for "this Part and all the provisions of this Part of this Act"; (I.) reads as follows: "the principal place of business of an unregistered company shall for all the purposes of the winding-up of such company be deemed to be the registered office of the company"; in (III.) "by the Court" is inserted after "wound up"; in (III.) (a), (b), and (c), and in (IV.) (a), (b), (c), and (d) "whenever" is substituted for "when"; in (IV.) "considered" is substituted for "deemed"; in (IV.) (b) "legal" is omitted before "proceeding"; "manager" is inserted after "director"; in (IV.) (a) "at law or in equity" is inserted after "is indebted"; in (IV.) (c) "at law or in equity" is inserted after "proceeding"; in (IV.) (b) "against suit, action, or other legal proceeding and" is inserted after "reasonable satisfaction"; in (IV.) (c) "against" is omitted before "any member". At the beginning of (IV.) "Act" is omitted; this is obviously a typographical error. — Cp. *In re Bundaberg, etc., Society*, 9 Q. L. J. 51.

194. = V. a. (No. 1074) § 184, except: "at law or in equity" is inserted after "who is liable"; "the" is omitted before "insolvency" and before "marriage"; "contributory" is substituted for "contributor". — Cp. f. (53 Vic. No. 18) § 18, 19, *infra*.

195. = V. a. (No. 1074) § 185, except: "may" is omitted after "the Court" and inserted before "upon the application"; "legal" is omitted before "proceeding"; "or against" is substituted for "as well as against".

196. = V. a. (No. 1074) § 186, except: "this Part of" is omitted.

197. = V. a. (No. 1074) § 187, except: in both instances "or official liquidators" is inserted after "official liquidator"; "or their" is inserted after "by his"; "or names" is inserted after "official name" and after "such name"; "purpose of effectually" is substituted for "purposes of effectually".

198. = V. a. (No. 1074) § 188, except: throughout "this Division of" is omitted; "this Part of" is omitted after "formed under".

¹⁾ *Sic*; obviously "VII".

*Schedules.**First Schedule.*

[Table A is substantially identical with the corresponding Table in the English Act, 25 & 26 Vic. c. 89.]

[Tables B and C are repealed. Form D. [§ 43] is given.]

Second Schedule.

[Contains the forms of memoranda of association similar to those contained in the English Act, 25 & 26 Vic. c. 89.]

f) 53 Vic. No. 18. An Act to further amend The Companies Act of 1863 (13th November, 1889).

Preliminary.

Short title. 1. This Act shall be called and may be cited as *The Companies Act Amendment Act of 1889*.

Act to be construed as one with 27 Vic. No. 4. 2. *The Companies Act of 1863* is hereinafter referred to as the Principal Act, and the Principal Act, *The Mining Companies Act of 1886*, and this Act are hereinafter distinguished and may be cited for all purposes as *The Companies Acts, 1863 to 1889*, and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the Principal Act; and the expression "this Act" in the Principal Act or this Act, and any expression referring to the Principal Act, which occurs in any Act or other document, shall be construed to mean the Principal Act as amended by *The Mining Companies Act of 1886*, or this Act; and the expression "the Court" in this Act shall be construed to mean the Court which has jurisdiction to make an order for the winding-up of the company in question.

Commencement of Act. 3. This Act shall come into force on the first day of January, One thousand eight hundred and ninety, which date is hereinafter referred to as the commencement of this Act.

Reduction of capital.

4. = T. d. (60 Vic. No. 3) § 3, except: between the words "reduce its capital" and "no such resolution" the following is inserted: "including paid-up capital, whether by cancelling any lost capital or any capital unrepresented by available assets, or by paying off any capital which may be in excess of the wants of the company or otherwise. Paid-up capital may be reduced either with or without extinguishing or reducing the liability, if any, remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved notwithstanding anything herein contained"; "but" is omitted before "no such resolution". — Cp. In re Bank of North Queensland, 9 Q. L. J. Note No. 20.

5. = T. d. (60 Vic. No. 3) § 4.

6. = T. d. (60 Vic. No. 3) § 5. — In an application under this section a list of creditors must be settled by the Judge after advertisement. — In re Cooneana, etc., Co., 4 Q. L. J. 13.

7. = T. d. (60 V. No. 3) § 9—10, except: "as mentioned in this Act" is omitted; near end of § 10 "a company" is substituted for "the company"; and the following sentence is added: "The minute required to be registered in the case of reduction of capital shall show, in addition to the other particulars required by law, the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share".

8. = T. e. (6 Edw. 7, No. 25) § 4, except: "this Act" is substituted for "*The Companies Act, 1896*".

9. = T. d. (60 Vic. No. 3) § 7, except: "as hereinafter provided" is omitted.

10. = T. d. (60 Vic. No. 3) § 8.

11. = T. d. (60 Vic. No. 3) § 11, except: "and the amount (if any) proposed to be deemed to have been paid up on each share" is omitted.

12. = T. d. (60 Vic. No. 3) § 12.

13. = T. d. (60 Vic. No. 3) § 13, except: "seventy-ninth" is substituted for "one hundred and twelfth".

14—15. = T. d. (60 Vic. No. 3) § 14—15.

16. = V. a. (No. 1074) § 8.

Subdivision of shares.

17. = V. a. (No. 1074) § 9, except: "by which the capital of the company is increased or reduced, or by which the amount of the shares is reduced" is inserted after "special resolution", and "secretary" is inserted after "director".

Registration of unlimited companies as limited companies.

Registration anew of company. 18. Subject as in this Act mentioned, any company registered before or after the passing of this Act as an unlimited company may register under the Principal Act and this Act as a limited company. The registration of an unlimited company as a limited company in pursuance of this Act shall not affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations may be enforced in manner provided by Part VII. of the Principal Act, in the case of a company registering in pursuance of that Part. — E. § 57; N. S. W. a. (No. 40 of 1899) 34; S. A. a. (No. 557) 13; W. A. a. (56 Vic. No. 8) 14; N. Z. 82.

Reserve capital of company how provided. 19. An unlimited company may, by the resolution passed by the members, when assenting to registration as a limited company under this Act, and for the purpose of such registration or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares. Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up. And, in cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up. A limited company may, by a special resolution, declare that any portion of its capital which has not been already called up shall not be capable of being called up except in the event of and for the purposes of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up. — E. § 59.

Application of the Principal Act and this Act. 20. On the registration, in pursuance of this Act, of a company which has been already registered, the Registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but save as aforesaid, the registration of such a company shall take place in the same manner and have the same effect as if it were the first registration of that company under the Principal Act. — E. § 57.

Privileges of Act available notwithstanding constitution of company. 21. A company authorised to register under the provisions of the three last preceding sections of this Act may register thereunder, and avail itself of the privileges conferred by this Act, notwithstanding any provisions contained in any Act of Parliament, Royal Charter, deed of settlement, contract of copartnership, cost book, regulations, Letters Patent, or other instrument constituting or regulating the company. — E. § 263 (III).

Liability on bank notes.

[§ 22 repeals c. (27 Vic. No. 4) § 176, and provides for unlimited liability of banks for notes issued by them.]

Audit of banking companies.

[§§ 23—25 relate to the audit of accounts of banking companies.]

Associations not for profit.

[§ 26 relates to associations formed for purposes not of gain.]

Calls upon shares.

Companies may have some shares fully paid and others not. 27. Nothing contained in the Principal Act shall be deemed to prevent any company under that Act, if authorised by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things, namely: 1. Making

arrangements on the issue of shares for a difference between the holders of such shares in the amounts of any calls to be made thereon, and in the time of payment of such calls; 2. Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him without any call having been made in respect thereof; 3. Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others. — E. § 39; N. S. W. a. (No. 40 of 1899) 54; T. a. (33 Vic. No. 22) 41; S. A. a. (No. 557) 79; W. A. a. (56 Vic. No. 8) 81; N. Z. 36. — As to jurisdiction of Small Debt Courts in actions for debt on calls, see *Great Freehold Mining Estate v. Grade*, 4 Q. L. J. 9.

Manner in which shares are to be issued and held. 28. Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by the memorandum of association or by a contract duly made in writing, and filed with the Registrar of Joint Stock Companies at or before the issue of such shares. — N. S. W. a. (No. 40 of 1899) 55; T. a. (33 Vic. No. 22) 42; S. A. a. (No. 557) 25; W. A. a. (56 Vic. No. 8) 26. — For an agreement held not to be in compliance with this section, see *In re Darling Downs Brewery*, 9 Q. L. J. 225.

Shares issued at a discount.

Shares already issued at a discount to be deemed fully paid up when agreed on amount paid. 29. Whereas in many cases before the commencement of this Act shares in companies have been allotted on the condition that a smaller sum of money than the whole amount thereof should be payable by the holders to the company: And whereas doubts have arisen whether, notwithstanding such allotment, the holders of such shares are not liable to pay the whole amount thereof in cash: Be it enacted and declared that any contract made *bonâ fide* before the passing of this Act between any company which at the time of such contract had been carrying on business for at least twelve months and any allottee of shares therein, and any contract made *bonâ fide* after the passing of this Act between any company which at the time of such contract has been carrying on business for at least twelve months and any allottee of shares therein, to the effect, in either case, that such allottee shall not be liable to pay more than a portion of the whole amount of such shares, and that on payment of such agreed amount the shares shall be deemed to be fully paid up, was and shall be valid, so that such allottee shall not be liable to pay more than the amount specified in such contract in respect of the shares so allotted to him, and that on payment of such amount the shares shall be deemed to be fully paid up. — See note to § 28, *supra*. The transfer of an interest in land held a sufficient equivalent for shares issued. — *In re Mount Clara C. M. Co.*, 4 S. C. R. (Q.) 112 (decided 1875).

Transfer of shares.

30. = N. S. W. a. (No 40 of 1899) § 56, except: “and on the production of a transfer duly executed by the transferee” is inserted after “interest in the company”. — As to company’s duty where transfer is signed by agent, see *Christoe v. Golden Crown G. M. Co.*, 3 Q. L. J. 1.

Prospectus, etc., to specify dates and names of parties to any contract made prior to issue of such prospectus, etc. Non-compliance deemed fraudulent. Default involves liability. Agreement to waive, void. 31. 1. Every prospectus of a company, and every notice inviting persons to subscribe for shares or debentures in any joint-stock company, shall disclose truly all such particulars as are within the knowledge of the promoters, directors, and officers issuing the same, or any of them, and are material to be made known to any person invited to take shares or debentures in order to enable him to form a judgment as to the expediency of so doing with respect to: a) The property acquired or to be acquired; b) The consideration paid or to be paid; c) The mode in which that consideration has been or is to be applied; and d) Any arrangement by which the promoter, or any person on his behalf, or by his aid or connivance, derives any benefit or advantage from or conditional on the payment of purchase or other money by the company, or out of or conditional on the issue of any shares or debentures by the company; and shall specify the dates and the names of the parties to, and shortly describe the substance of, any contract entered into by the company or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors, or the company, or otherwise. 2. Any prospectus or notice not complying

with the above provision shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus or notice. 3. If any person makes default in the performance of the duty thus imposed on him, he shall be liable to make compensation for any loss or damage sustained by reason of the default, and shall also, if he knowingly and wilfully makes such default, be guilty of a misdemeanour. 4. Any agreement purporting to waive or dispense with the performance of any of the duties imposed by this section shall be void. [5. is repealed by g. (55 Vic. No. 10) § 9.] — E. § 81; N. S. W. a. (No. 40 of 1899) 66; V. f. (No. 1482) 104; T. a. (33 Vic. No. 22) 21, c. (59 Vic. No. 19) 30; S. A. a. (No. 557) 221—224; W. A. a. (56 Vic. No. 8) 222—224; N. Z. 74—81.

Branch registers.

Power for companies to keep branch register. Notice to be given to Registrar of situation of branch office, of change or discontinuance thereof. Branch registers to form part of principal register. And be kept as directed by Principal Act. Qualification as to closing of transfer books, and jurisdiction of local courts. Copies of entries in branch registers to be transmitted to registered office and entered in duplicate register. Shares registered in branch registers to be distinguished, and transactions therein to be registered only in branch register. Branch registers may be discontinued and entries transferred. Share certificates to notify register upon which shares are transferable. Company may regulate the keeping of branch registers. 32. 1. Any company having a capital divided into shares, and whose objects comprise the transaction of business in any part of the British dominions beyond the limits of the Colony of Queensland, may, if authorised so to do by its regulations as originally framed, or as altered by special resolution, cause to be kept in such part of the British dominions a branch register or registers of members. 2. Such company shall give the Registrar notice of the situation of every office where any such branch register is kept, and of every change therein, and of the discontinuance of any such office in the event of the same being discontinued. 3. Every branch register shall, as regards the particulars entered therein, be deemed to be a part of the company's register of members, and shall be *prima facie* evidence of all particulars entered therein. 4. Every such register shall be kept in the manner provided by the Principal Act and this Act, with this qualification, that the advertisement mentioned in section thirty-two of the Principal Act shall be inserted in some newspaper circulating in the part of the British dominions wherein the register to be closed is kept. 5. The company shall cause to be transmitted to its registered office in the Colony of Queensland a copy of every entry in its branch register or registers as soon as may be after such entry is made, and the company shall cause to be kept at its said registered office, duly entered up from time to time, a duplicate or duplicates of its branch register or registers. The provisions of section thirty-one of the principal Act shall apply to every such duplicate, and every such duplicate shall be deemed to be a part of the register of members of the company. 6. Subject to the foregoing provisions with respect to the duplicate register, the shares registered in a branch register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a branch register shall, during the continuance of the registration of such shares in such branch register, be registered in any other register. 7. The company may discontinue to keep any branch register, and thereupon all entries in that register shall be transferred to some other branch register kept in the same place, or to the register of members kept at the said registered office of the company. 8. Every certificate issued by the company shall contain a notification that any transfer of the share or shares named therein will be transferred only at the registered office of the company, or in a particular branch register, naming it, and such transfer shall be registered accordingly, but not otherwise. 9. Subject to the foregoing provisions any company may by its regulations as originally framed, or as altered by special resolution, make such provisions as it may think fit respecting the keeping of branch registers. — E. § 35; N. S. W. a. (No. 40 of 1899) 25—32; V. f. (No. 1482) 61—69; N. Z. (No. 53 of 1903) 111—120.

Registered office.

Place of registered office may be altered. 33. The members of a company may by special resolution alter the memorandum of association in regard to the

place in which the registered office of the company is situated, by removing the registered office from such place to some other place within the Colony. Notice of every such alteration shall be forthwith given by the company to the Registrar and registered by him. — Cp. notes to N. S. W. a. (No. 40 of 1899) § 23 l.

Meetings.

Company to hold meeting within six months after registration. 34. Every company formed under the Principal Act after the commencement of this Act shall hold a general meeting within six months after it is registered; and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after the expiration of such six months until the meeting is held; and every director, secretary, or manager of the company, and every subscriber of the memorandum of association, who knowingly authorises or permits such default shall be liable to the same penalty. Such meeting shall have power to transact all such business of the company as shall be specified in the notice convening the meeting, or of which previous notice shall have been given in manner required by the articles of association. — E. § 65; N. S. W. a. (No. 40 of 1899) 242; V. f. (No. 1482) 55 (1, 8); T. a. (33 Vic. No. 22) 53; S. A. a. (No. 557) 47; W. A. a. (56 Vic. No. 8) 49; N. Z. 87.

Compromise.

Where compromise proposed, Court may order a meeting of creditors, etc., to decide as to such compromise. 35. Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Act, or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the Court, under the Principal Act, and the creditors of such company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company. — E. § 120; N. S. W. a. (No. 40 of 1899) 160; V. b. (No. 1269) 3—7; T. c. (59 Vic. No. 19) 18, 19; S. A. a. (No. 557) 172; W. A. a. (56 Vic. No. 8) 174; N. Z. 258—260. — See j. (60 Vic. No. 21) § 2, 3, *infra*. See *In re Queensland Deposit Bank*, 4 Q. L. J. 179.

Duplicate seals.

Power to companies to have an official seal. 36. Any company whose objects require or comprise the transaction of business in countries, places, or territories beyond the limits of the Colony of Queensland may cause to be prepared an official seal for and to be used in any such place, district, or territory in which the business of the company shall be carried on, and every such official seal may and shall be a fac-simile of, or as nearly as practicable a fac-simile of, the common seal of the company, with the exception that on the face thereof shall be inscribed the name of each and every place, district, or territory in and for which it is to be used: Provided that it shall be lawful for any such company as aforesaid from time to time to break up and renew any official seal or seals, and to vary the limits within which it is intended to be used. — E. § 79.

Power to companies to appoint agents abroad to affix seals. 37. Every company having or using any such official seal as is hereby authorised may from time to time, by any instrument or instruments in writing under the common seal of the company, empower any agent or agents specially appointed for the purpose, or any local agent, board, committee, manager, or commissioner appointed under the provisions of the articles of association of such company, in any place, district, or territory situate beyond the limits of the Colony of Queensland where the business of the company is for the time being carried on, to affix such official seal to any deed, contract, or other instrument to which the company is a party in such place, district, or territory, and no other order of the company or the board of directors thereof shall be necessary to authorise any such seal to be affixed to any deed, contract, or other instrument. — E. § 79.

As to the duration of powers granted under section 37 of this Act. 38. Every power granted under the last preceding section shall as between the company, their successors and assigns on the one hand, and the person or persons dealing with the agent, or agents, board, committee, manager, or commissioner named in the instrument conferring the power, and all parties claiming through or under such person or persons on the other hand, continue in force during the period (if any) mentioned in the instrument conferring the power, or if no period is therein mentioned, then until notice of the revocation or determination of the power has been given to such person or persons. — E. § 79.

Person affixing seal to document to certify the date when so affixed. 39. Whenever any such official seal as aforesaid is affixed to any document, the person affixing the same shall by writing under his hand and written on the document to which the seal may have been affixed, certify the date when and the place where the same was affixed, and any document to which any such seal shall have been duly affixed within the place, or district, or territory, the name whereof is inscribed on such seal, shall bind the company in the same way and to the same extent, and have the same force and effect, as if it had been duly sealed with the common seal of the company. — E. § 79.

Companies not to exercise powers of Act unless authorised. 40. The powers given by the four last preceding sections of this Act shall be exercised by such companies only as are expressly authorised to exercise the same by their articles of association, or by a special resolution passed according to the provisions of the Principal Act, and shall be exercised by such companies subject to any directions or restrictions in the articles of association or the special resolution contained.

Section 55 of 27 Vic. No. 4, not repealed. 41. Nothing herein contained shall operate to repeal the provisions of the fifty-fifth section of the Principal Act, but such section shall continue in force, and all acts done or to be done thereunder shall be as valid and effectual as if this Act had not been passed, and the five last preceding sections shall be construed as in aid of, and as ancillary to, the provisions of such sections.

Defunct companies.

[§ 42 is repealed.]

Winding-up.

43. = N. S. W. a. (No. 40 of 1899) § 90, except: no division into paragraphs; “the principal Act” is substituted for “this Part of this Act”; “number” is substituted for “numbers”; “unless” is inserted before “the shares”; “provided that” is inserted before “where a share”; “by or in the name of any trustee or trustees” is substituted for “any trustee”.

[§ 44—46 relate to the reference of winding-up proceedings to a District Court or from one District Court to another, and provide for appeals from such District Courts.]

47. = T. d. (60 Vic. No. 3) § 16, except: “one hundred and seventy-first” is substituted for “two hundred and fifth”; “respectively” is inserted before “extend”.

[§ 48 empowers the District Courts to make rules regarding procedure before them under this Act, and to fix the costs and charges.]

Claims for wages preferential in winding-up companies. 49. In the distribution of the assets of any company being wound up under the Principal Act, subject to the retention of such sums as may be necessary for the costs of administration, there shall be paid in priority to other debts all wages of any labourer or workman in respect of services rendered to the company during the three months next before the commencement of the winding-up, and if the assets are insufficient to pay the costs and meet the claims for wages in full, the claims for wages shall abate proportionately between themselves. — E. § 209; V. a. (No. 1074) 386, 388, 389; T. c. (59 Vic. No. 19) 29.

Saving.

Not to exempt companies from provisions of s. 190 of Principal Act. 50. Except as hereinbefore expressly provided nothing in this Act contained shall exempt any company from the third or fourth provisions of the one hundred and ninetieth section of the Principal Act, restraining the alteration of any provision in any Act of Parliament or Letters Patent.

g) 55 Vic. No. 10. An Act to amend The Companies Acts, 1863 to 1889, so far as regards the Powers of Companies with respect to the Instruments under which they are constituted or regulated; and so far as regards the Liability of Directors and others for Statements in Prospectuses and other Documents soliciting Applications for Shares or Debentures (28th September, 1891).

Short title and construction. 1. 1. This Act may be cited as *The Companies Act of 1891*. 2. This Act and *The Companies Acts, 1863 to 1889*, shall be construed as one Act, and may be cited collectively as *The Companies Acts, 1863 to 1891*.

Division of Act. 2. This Act is divided into two Parts, as follows: I. Powers of companies to alter their constitution; II. Liabilities of directors and others.

Part I. Powers of Companies to alter their Constitution.

Interpretation. 3. In this Part of this Act the term "deed of settlement" includes any contract or copartnership or other instrument constituting or regulating the company and not being an Act of Parliament, a Royal Charter, Letters Patent, or a memorandum of association.

4. 1. = V. f. (No. 1482) § 77, except: "registered under *The Companies Acts, 1863 to 1891*" is inserted before "may by special resolution"; "may" is inserted before "alter the form", and "it has been" before "confirmed"; "a Court which has jurisdiction to make an order for winding-up the company" is substituted for "the Court". 2. Before confirming any such alteration the Court must be satisfied: a) That sufficient notice has been given to every holder of debentures or debenture stock of the company, and to every person or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and b) That, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court: Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section. 3. = V. f. (No. 1482) § 78 (3). 4. = V. f. (No. 1482) § 79, except: "this Division of" is omitted; "provided always that" is inserted before "it shall not be lawful"; "thinks fit" is substituted for "think fit". 5. The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company: (a—e) = V. f. (No. 1482) § 80 (a—e). — Confirmation of alteration enlarging the area of operation of a company. — In re Oriental & Glamire G. M. Co., 10 Q. L. J. Note No. 30.

5. 1. = V. f. (No. 1482) § 82, except: "for a deed of settlement" is substituted for "for the deed of settlement"; "Registrar of Joint Stock Companies within" for "Registrar-General within"; "and" is omitted after "date of the order"; "Registrar" is substituted for "Registrar-General", and "requisitions" for "requirements"; "of this Division" is omitted; "*The Companies Act, 1863*" is substituted for "the principal Act". No division into subsections. 2. If a company makes default in delivering to the Registrar any document required by this Act to be delivered to him the company shall be liable to a penalty not exceeding ten pounds for every day during which it is in default.

Part II. Liabilities of Directors and Others.

6. 1. = T. c. (59 Vic. No. 19) § 30 (1), except: "authorised such naming of him" is substituted for "authorised such naming of himself", and "any loss or damage they may sustain" is substituted for "the loss or damage they may have sustained"; in the proviso in (II.) "or" is omitted before "accountant", and "an extract" is substituted for "or extract"; in (III.) "a statement" is inserted before "in what purports to be", and "of a statement contained in such" before "copy of or extract from"; "in the case of a person named as director" is inserted before "it is proved"; "to the person claiming to be aggrieved" is inserted after "allotment thereunder".

2. = T. c. (59 Vic. No. 19) § 30 (2), except: the beginning words are "the term 'promoter' when used" instead of "a promoter"; "does not include" is substituted for "shall not include". 3. = T. c. (59 Vic. No. 19) § 30 (3), except: "is desirous" is substituted for "shall be desirous", "issues" for "shall issue", and "has adopted" for "have adopted". 4. = T. c. (59 Vic. No. 19) § 30 (4), except: "term" is substituted for "word".

7. = T. c. (59 Vic. No. 19) § 31, except: "issue of the prospectus" is substituted for "issue of such prospectus" in both places where it occurs.

8. = T. c. (59 Vic. No. 19) § 32, except: "being" is inserted before "named".
[§ 9 repeals f. (53 Vic. No. 18) § 31 (5), and is itself repealed.]

h) 56 Vic. No. 24. An Act to amend the Law relating to the Winding-up of Joint Stock Companies (4th November, 1892).

Short title and construction. 1. This Act shall be read and construed with and as an amendment of *The Companies Acts, 1863 to 1889*, and may be cited as *The Companies (Winding-up) Act of 1892*; and this Act and *The Companies Acts, 1863 to 1889*, may together be cited as *The Companies Acts, 1863 to 1892*.

Interpretation. 2. In this Act the following terms shall have the meanings next hereinafter assigned to them, that is to say: "The Principal Act" — *The Companies Act, 1863*; "District Receiver" — A District Receiver in Insolvency under *The Insolvency Act of 1874*; "Official Trustee" — An official trustee under that Act; "Prescribed" — Prescribed by rules of Court.

Provisional official liquidator. 3. When the Court exercises the power of appointing an official liquidator provisionally under the eighty-fourth section of the Principal Act, an official trustee or district receiver shall, unless for some special reason the Court otherwise orders, be appointed such provisional official liquidator.

Official trustee to be appointed liquidator, and meeting of creditors to be summoned. 4. Every order for winding-up a company shall appoint some one of the official trustees to be official liquidator of the estate and effects of the company, and shall also, if the order is made upon the petition of a creditor, and may in any other case if the Court thinks fit, appoint a time and place for holding a general meeting of the creditors of the company for the election of a liquidator, which time shall not be earlier than seven days nor later than forty-two days from the date of the order.

Official liquidator continues till another elected or appointed. 5. The official liquidator so appointed by the order of the Court shall be the liquidator for all purposes, until a liquidator is elected by the creditors, or until another liquidator is appointed by the Court.

Duty of official liquidator. 6. Unless otherwise ordered by the Court, the official liquidator shall upon his appointment take or cause to be taken possession of the whole of the property of the company, and shall cause such of it as is of a perishable nature to be sold, and, if a liquidator is to be elected by the creditors, shall reserve the residue until the time for the election of a liquidator has elapsed.

General meeting of creditors for the election of a liquidator. 7. The general meeting of creditors for the election of a liquidator shall be held at the place appointed by the Court. Notice of the meeting shall be given in the prescribed form in the *Gazette* and the prescribed newspapers or such newspapers as the Court directs in each case, and by affixing a copy thereof in some conspicuous place at the principal place of business of the company.

Creditors must prove. Mode of proof. Certificate of proof. 8. A creditor desiring to vote at such meeting must first make preliminary proof that a debt provable in the winding-up is due to him. Such proof may be made by affidavit in the prescribed form before a District Court Judge, police magistrate, justice of the peace, or commissioner for affidavits, who, upon such proof being made to his satisfaction, shall if required deliver a certificate thereof to the creditor in the form following or to the like effect: In the Winding-up of the A. B. Company (Limited). C. D. has proved before me a debt of £ . . . against this Company. Dated at E. F. [*P. M. or etc.*]

Effect of certificate. 9. Every such certificate shall be delivered to the chairman of the general meeting, and shall entitle the creditor named in it to vote

at the meeting as a creditor in respect of a debt of the amount stated in the certificate.

Proceedings at meeting. 10. The creditors assembled at the general meeting (hereinafter called the first meeting of creditors) shall and may do as follows: 1. They may by resolution appoint some fit person resident in Queensland, whether a creditor or not, to fill the office of liquidator of the company at such remuneration as they may from time to time determine (if any), or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned; 2. They shall, when they appoint a liquidator, by resolution declare what security (if any) is to be given, and to whom, by the person so appointed before he enters on the office of liquidator; 3. They may by resolution appoint some other fit person or persons, not exceeding five in number, and being creditors qualified to vote at such first meeting of creditors, or authorised in the prescribed form by creditors so qualified to vote, to form a committee of inspection for the purpose of superintending the performance of his duties by the liquidator, at such remuneration (if any) as they may from time to time determine; 4. They may by resolution give directions as to the manner in which the property of the company is to be administered by the liquidator, and it shall be the duty of the liquidator to conform to such directions, unless the Court for some just cause otherwise orders.

Further provisions as to first meeting of creditors. 11. The first meeting of creditors shall be held in the prescribed manner and subject to the prescribed regulations as to the quorum, adjournment of meeting, and all other matters relating to the conduct of the meeting or the proceedings at it: Provided that 1. The meeting shall be presided over by such person as is directed by the order of the Court, or, in the event of his being unable to attend through illness or any unavoidable cause, by a person elected by the meeting; 2. A person shall not be entitled to vote as a creditor unless at or previously to the meeting he has in manner hereinbefore prescribed proved a debt provable in the winding-up to be due to him; 3. A creditor shall not vote in respect of an unliquidated or contingent debt or a debt the value of which is not ascertained; 4. Votes may be given either personally or by proxy; 5. A resolution shall be decided by a majority in value of the creditors present, personally or by proxy, at the meeting, and voting on the resolution; 6. Proxies may be filed in the Registry of the Supreme Court or a District Court and transmitted by telegraph by the Registrar of such Court to the chairman of the meeting.

Appointment of liquidator to be confirmed. 12. The appointment of a liquidator shall be reported to the Court, and the Court, upon being satisfied that the requisite security (if any) has been entered into by him, and that he is a fit person to be liquidator, may confirm his appointment, and the appointment shall date from the date of such confirmation.

Meeting may be adjourned. 13. The chairman may adjourn the first meeting of creditors from time to time and from place to place, subject to the directions of the Court.

Elected liquidator to succeed official liquidator. 14. On the appointment of a liquidator as aforesaid the official trustee shall cease to be liquidator.

Meaning of "official liquidator" in Principal Act. 15. The expression "official liquidator" when used in the Principal Act shall include any person appointed under this Act as liquidator in a winding-up, whether he is an official liquidator or not.

Appointment of new liquidator if improperly elected. 16. If the proof or proofs of any creditor or creditors who has or have voted at the election of a liquidator, and without whose vote or votes the liquidator would not have been elected, is or are afterwards expunged or reduced, the Court may at any time, upon the application of a majority in value of the creditors who have proved in the winding-up, order a fresh meeting to be held for the election of a new liquidator in lieu of the one originally appointed, which meeting shall be summoned and held at such place as the Court directs, and in the same manner as nearly as may be as the first meeting of creditors, and if a new liquidator is elected at such meeting the Court may confirm his appointment as in other cases.

Court may order meeting for election of new liquidator. 17. The Court may at any time, upon sufficient cause shown, remove a liquidator, and may order a meeting of creditors or contributories to be held for the election of a new liquidator at such time and place and in such manner as the Court thinks fit, or may appoint a new liquidator without any meeting or election.

Vacancy in office of liquidator. 18. If from any cause there is at any time no liquidator acting during the continuance of a winding-up, the official trustee originally appointed as official liquidator, or his successor in the office of official trustee, shall be and act as liquidator.

List of contributories. 19. The list of contributories shall be prepared by the liquidator as soon as practicable after his appointment.

Enforcement of payment of calls. 20. When an order is made by the Court under the provisions of the Principal Act for the payment or¹⁾ moneys due by a contributory, such order shall be entered up as a judgment of the Court, and may be enforced in the same manner as other judgments, but shall not be enforced by process as for contempt of Court.

Rules in insolvency to prevail in winding-up. 21. In the winding-up of a company the same rules shall prevail and be observed for determining the respective priorities of creditors, and for determining what creditors are entitled to take or retain the property of the company as security, and for determining the validity of any such security, as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent. — Cp. *In re North Queensland, etc., Co.*, (1902) L. R. (Q.) 286.

Date of commencement of winding-up when voluntary winding-up continued or superseded. 22. When a voluntary winding-up is ordered to be continued subject to the supervision of the Court, and when a voluntary winding-up, either subject or not subject to the supervision of the Court, is superseded by an order directing the company to be wound up compulsorily, the winding-up shall be deemed to have commenced at the date of the passing of the resolution for winding-up the company.

Powers of Court. 23. In addition to the powers and authorities conferred on the Court by *The Companies Acts, 1863 to 1889*, the Court shall have, with respect to the property of a Company which is being wound up by the Court or under the supervision of the Court, or which is being wound up voluntarily, and with respect to the winding-up, and with respect to the liquidator and all other persons, such and the same powers and authorities as the Court has under *The Insolvency Act of 1874* with respect to the property of an insolvent debtor, and with respect to the administration of his estate, and with respect to the trustee in insolvency and all other persons concerned in the distribution of the estate.

Costs of winding-up in inferior Courts. 24. When a company is being wound up in a District Court or a Warden's Court or Commissioner's Court, the costs of the winding-up and of all proceedings in the winding-up shall be according to the scale of costs allowed in those Courts respectively, and not according to the scale of costs in the Supreme Court.

Percentage to be paid to Consolidated Revenue Fund by official trustee acting as official liquidator. 25. Every official trustee acting as an official liquidator shall pay into the Consolidated Revenue Fund a sum at the rate of five pounds for every hundred pounds that come to his hands as official liquidator as the proceeds of property realised or debts collected by him while acting as official liquidator. But such percentage shall not be payable in respect of any moneys that come to his hands by devolution from an elected or appointed liquidator who has preceded him in his office.

i) 57 Vic. No. 3. An Act to amend The Companies Acts, 1863 to 1892 (21st July, 1893).

Short title and construction. 1. This Act shall be read and construed with and as an amendment of *The Companies Acts, 1863 to 1892* and may be cited as *The Companies Act of 1893*; and this Act and *The Companies Acts, 1863 to 1892*, may together be cited as *The Companies Acts, 1863 to 1893*.

Power to Court to stay proceedings and sanction compromise or arrangement before order made or resolution passed for winding-up. 2. Where at any time after the presentation of a petition for the winding-up of a company any compromise or arrangement is or has heretofore been proposed between such company and the creditors of such company, or any class of such creditors, it shall be and be deemed

¹⁾ *Sic*; "of" (?).

to have always been lawful for the Court, in addition to any other of its powers, on the application in a summary way of the company or of the provisional official liquidator (if any) or any creditor of the company, and notwithstanding that no order has been made or resolution passed for the winding-up of such company, to stay further proceedings in any action, suit, petition, or proceedings against the company upon the terms (if any) imposed by the Court, and also to order a meeting of such creditors or class of creditors to be summoned in the manner and at the time directed by the Court, and if a majority in number, representing three-fourths in value of such creditors or class of creditors present, either in person or by proxy or attorney, at such meeting, agrees or has heretofore agreed to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be and be deemed to have always been binding upon all such creditors or class of creditors, as the case may be, and also upon the company and the provisional official liquidator (if any), contributories, and shareholders of the company. — See j. (60 Vic. No. 21) § 2, *infra*. Cp. *In re Alfred Shaw & Co.*, 8 Q. L. J. 48.

Defects not to invalidate proceedings. 3. No proceeding already taken under *The Companies Acts, 1863 to 1892*, or hereafter to be taken under the said Acts and this Act, shall be invalidated by any defect, irregularity, or deficiency of notice or time unless the Court or a Judge is of opinion that substantial injustice has been caused by such defect, irregularity, or deficiency, and that such injustice cannot be remedied by any order of such Court or Judge. The Court or Judge may, if it or he think fit, make an order declaring that any such proceeding is valid notwithstanding any such defect, irregularity, or deficiency. — V. f. (No. 1482) 165.

j) 60 Vic. No. 21. An Act to amend *The Companies Acts, 1863 to 1893* (17th December, 1896).

Short title and construction. 1. This Act shall be read and construed with and as an amendment of *The Companies Acts, 1863 to 1893*, and may be cited as *The Companies Act of 1896*; and this Act and *The Companies Acts, 1863 to 1893*, may together be cited as *The Companies Acts, 1863 to 1896*.

Extension of power of Court to order meeting of creditors under section 2 of 57 Vic. No. 3, and section 35 of 53 Vic. No. 18. 2. (As amended by *Acts Shortening Act, 1903*.) The powers given to the Court, by section thirty-five of *The Companies Act Amendment of 1889* and section two of *The Companies Act of 1893*, to order a meeting of the creditors of a company or any class of such creditors may be exercised, although the Court shall not restrain further proceedings in any action, suit, petition, or proceeding against the company, and although no action, suit, petition, or proceeding be pending against the company; and the provisions of the said Acts shall apply in such cases as fully and in the same manner as if some action, suit, petition, or proceeding against the company had been pending and had been restrained.

Company deemed to be winding-up when petition presented. 3. For the purposes of section thirty-five of *The Companies Act Amendment Act of 1889*, a company shall be deemed to be in course of being wound up when a petition for the winding-up of the company has been presented, and the powers of that section shall apply not only as between the company and the creditors or any class thereof but as between the company and the members or any class thereof.

k) 50 Vic. No. 31. An Act to amend and declare the law of Queensland with respect to Joint Stock Companies incorporated in other Parts of Her Majesty's Dominions (2d December, 1886).

Short title and commencement. 1. This Act may be cited as *The British Companies Act of 1886*, and shall commence and take effect on and from the first day of January, One thousand eight hundred and eighty-seven.

Interpretation. 2. In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say: — “Country of incorporation” — The part of Her Majesty’s Dominions under the laws of which the company in question is incorporated. “British company” — A joint stock company or other company or society incorporated according to the laws of some part of Her Majesty’s Dominions other than Queensland, and which under the laws of the country of incorporation has perpetual succession and a common seal. “Registered British company” — A British company registered under the provisions of this Act. “Supreme Court” — The Supreme Court of Queensland. “Registrar” — The officer acting as Registrar of Joint Stock Companies under *The Companies Act, 1863*.

Registration of British companies. 3. Any British company may procure itself to be registered in Queensland in the manner hereinafter prescribed.

Documents to be deposited in office of Registrar of Joint Stock Companies.

4. A British company desiring to be so registered shall cause to be lodged in the office of the Registrar either: — 1. A certificate of incorporation under the hand of the Registrar of Joint Stock Companies or other proper officer of the country of incorporation, and under the seal of his office, together with a copy, certified by such Registrar or other officer, of the memorandum and articles of association, deed of settlement, or other instrument declaring the constitution and functions of the company; or 2. If the company is incorporated in the country of incorporation by an Act or Ordinance, a copy of such Act or Ordinance, purporting to be printed by the Queen’s Printer or the Official Printer for the Government of the country of incorporation; or 3. If the company is incorporated by Royal Charter, a copy of such Royal Charter certified by a notary public; or 4. Such other evidence of incorporation as the Registrar may require; together with, in any of the three last-mentioned cases, a copy of every deed of settlement or other instrument declaring the constitution and functions of the company.

[§ 5 is repealed.]

Certificate of registration to be issued and published in Gazette. 6. Upon the lodging of such evidence of incorporation as is hereinbefore prescribed, and upon payment of the prescribed fee, the Registrar shall issue a certificate, under his hand and the seal of his office, in the form following or to the like effect:

I, _____, Registrar of Joint Stock Companies of the Colony of Queensland, hereby certify that the [name of company] duly incorporated on [date of incorporation] under the laws of [country of incorporation], has this day been registered in the office of the Registrar of Joint Stock Companies of the Colony of Queensland, in accordance with the provisions of *The British Companies Act of 1886*.

Given under my hand and seal of office, at _____ this _____ day of _____, 18 _____

A.B.

A copy of such certificate shall be published in the *Gazette*.

Effect of registration. Proviso. 7. Upon such registration being made, the company named in the certificate shall, within Queensland, have and be entitled to the same rights, powers, capacities, and privileges, including the right to hold and convey land, and shall be subject to the same obligations, liabilities, and disabilities, as if it had been incorporated under the laws of Queensland, subject, nevertheless, to the provisions hereinafter contained. But nothing in this Act shall have the effect of enabling any such company to take or hold land in Queensland except under and subject to such conditions (if any) as are imposed by the constitution of the company.

Registered office. 8. A registered British company shall have a registered office in Queensland, to which all communications and notices may be addressed. Notice of the situation of such registered office, and of any change in the situation of a registered office, shall be given to the Registrar and recorded by him; and until such notice is given the company shall not be deemed to have a registered office. If any such company carries on business without having a registered office, the company and every officer thereof in Queensland shall incur a penalty not exceeding five pounds for every day during which business is so carried on.

Service of process on registered British companies. 9. Any writ or other process issued against a registered British company may be served by being left at the registered office of the company with some person there, or if there is no registered

office, or no person is found at the registered office, by being affixed in the office of the Registrar of the Supreme Court or other Court from which the process is issued.

Disabilities of companies not registered. 10. From and after the first day of January, One thousand eight hundred and eighty-eight, the following enactment shall have effect: — A British company is not, except by virtue of some Act of the Parliament of Queensland, or some Act or Ordinance having the force of law in Queensland, or some Royal Charter extending to and having effect in Queensland, competent to take, hold, convey, or transfer land in Queensland for an estate of freehold, unless such company has been registered in Queensland under this Act.

Proof of registration. 11. Production of the *Gazette* purporting to contain a copy of a certificate issued under the provisions of this Act shall be sufficient *prima facie* evidence, for the purpose of proceedings in any Court of Justice, or for any other purpose, of the due registration of the company mentioned in such certificate.

Winding-up.

Companies may be wound up. 12. The Supreme Court has jurisdiction to wind up a registered British company so far as it carries on operations within Queensland. — The place of principal administration of the affairs of a company in liquidation is that of the country under whose law the company was first formed. In the distribution of Queensland assets of a company formed in Victoria, and in course of being wound up in Victoria and in England, the claims of the Victorian liquidator would take precedence over those of the liquidator appointed in England. — *Re Alfred Shaw & Co., Ltd.*, 8 Q. L. J. 93. — Where a foreign company is carrying on business in Queensland and has a representative there, the Queensland assets must be administered in Queensland. The courts in winding up the company act within their equitable jurisdiction against the person. — *In re Colorado S. M. Co.*, 2 Q. L. J. 21. — See also *Goldsbrough, Mort & Co. v. Doyle*, 6 Q. L. J. 1.

Application of proceeds of lands of company. 13. In the event of the winding-up of a registered British company, all land of the company within Queensland shall, subject to any valid mortgage, encumbrance, or charge subsisting thereon, be applicable in the first instance in payment and discharge of the debts of the company contracted within Queensland, in priority to any other debts of the company, except debts secured by any such mortgage, encumbrance, or charge. — *Quære*, whether land in Queensland would vest in the liquidator of a foreign company unless an order for winding-up has been made in Queensland. — *Goldsbrough, Mort & Co. v. Doyle*, 6 Q. L. J. 1.

Companies now holding lands.

Saving of certain past transactions. 14. Any British company which holds land in Queensland at the commencement of this Act shall, upon the registration of the company under the provisions of this Act before the first day of January, One thousand eight hundred and eighty-eight, be entitled to the same rights and privileges with respect to such land as if this Act had been in force and the company had been registered under its provisions when the land was first acquired by the company.

General provisions.

Repeal of Act 31 Vic. No. 1. Saving of rights. 15. *The Foreign Companies Act of 1867* is hereby repealed, except as to companies which before the passing of this Act had registered a certificate of incorporation in accordance with the provisions of the said repealed Act, and every such company shall continue to have and be entitled to all the rights, powers, capacities, and privileges conferred on it by that Act, and shall be subject to all the obligations, liabilities, and disabilities imposed on it by that Act.

Saving of existing rights not expressly affected. 16. The provisions of this Act shall not be construed to diminish or affect any existing jurisdiction or authority of the Supreme Court, or any existing rights, liabilities, or disabilities of British companies, except so far as the same are expressly diminished or affected by the provisions of this Act.

1) 59 Vic. No. 2. An Act to facilitate Proceedings by and against Foreign Companies carrying on Business in Queensland (5th August, 1895).¹⁾

Short title. 1. This Act may be cited as *The Foreign Companies Act of 1895*. — The provisions of *The Bills of Sale Act of 1891* excluding the debentures of incorporated or joint stock companies from the operation of the Act apply to the debentures of foreign companies, whether registered or not, as well as to those of Queensland companies. — *Bergl v. Mount Chalmers Copper Mines, Ltd.*, (1902) S. R. (Q.) 35.

Interpretation. 2. In this Act, unless the context otherwise indicates, the following terms have the meanings set against them respectively, that is to say: — “Country of incorporation” — The country or state under the laws of which the company in question is incorporated. “Foreign company” — A joint stock company or other company or society incorporated according to the laws of a country other than Her Majesty’s dominions, and which under the laws of the country of incorporation has perpetual succession and a common seal. “Registered foreign company” — A foreign company registered under the provisions of this Act. “Supreme Court” — The Supreme Court of Queensland. “Registrar” — The officer acting as Registrar of Joint Stock Companies under *The Companies Act 1863*. — N. S. W. c. (No. 22 of 1906) 2; V. f. (No. 1482) 70 (1); T. f. (59 Vic. No. 17) 3; S. A. a. (No. 557) 3; W. A. a. (56 Vic. No. 8) 3; N. Z. 297.

Registration of foreign companies. 3. Any foreign company may procure itself to be registered for the purposes of this Act in the manner hereinafter described. — E. § 274; N. S. W. c. (No. 22 of 1906) 7; V. f. (No. 1482) 70, 71; T. f. (59 Vic. No. 17) 5, 9, 10; S. A. a. (No. 557) 196, 202; W. A. a. (56 Vic. No. 8) 198; N. Z. 298—300. — As to winding-up, see note to e. (27 Vic. No. 4) § 73, *supra*.

Documents to be deposited in office of Registrar of Joint Stock Companies. 4. A foreign company desiring to be so registered shall cause to be lodged in the office of the Registrar either: 1. A certificate of incorporation under the hand of the Registrar of Companies or other proper officer of the country of incorporation, and under the seal (if any) of his office, together with a copy, certified by such Registrar or other officer, of the memorandum and articles of association, deed of settlement, or other instrument declaring the constitution and functions of the company; or 2. If the company is incorporated in the country of incorporation by an Act or Ordinance or by Charter, a copy of such Act, Ordinance, or Charter, certified under the hand of a secretary of state of the country of incorporation, and under the seal (if any) of his office, or certified under the hand of a British ambassador, envoy, minister, chargé d’affaires, secretary of embassy or legation, consul-general, consul, vice-consul, acting consul, pro-consul, consular agent, or notary public, and under the seal of his office; or 3. Such other evidence of incorporation as the Registrar may require; together with, in either of the two last-mentioned cases, a copy of every deed of settlement or other instrument declaring the constitution and functions of the company. — See notes to § 3, *supra*.

[§ 5 is repealed.]

Certificate of registration to be issued. **Schedule.** 6. Upon the lodging of such evidence as is hereinbefore prescribed, and upon payment of the prescribed fee, the Registrar shall issue a certificate, under his hand, and the seal of his office, in the form in the Schedule hereto, or to the like effect. A copy of such certificate shall be published in the *Gazette*. — N. S. W. c. (No. 22 of 1906) 11; V. f. (No. 1482) 72; T. f. (59 Vic. No. 17) 13, g. (62 Vic. No. 26) 10; S. A. a. (No. 557) 204; W. A. a. (56 Vic. No. 8) 206, b. (60 Vic. No. 2) 4; N. Z. 303.

Effect of registration. 7. A registered foreign company may bring or defend any action, suit, or other legal proceeding in any court of justice in Queensland, having jurisdiction over the subject matter, as if such company had been incorporated under the laws of Queensland. — N. S. W. c. (No. 22 of 1906) 7, (1, 2); V. f. (No. 1482) 70 (1, 2); T. f. (59 Vic. No. 17) 4; S. A. a. (No. 557) 196; W. A. a. (56 Vic. No. 8) 198; N. Z. 298. — See note to § 1, *supra*.

Registered office. 8. A registered foreign company shall have a registered office in Queensland, to which all communications and notices may be addressed. Notice of the situation of such registered office, and of any change in the situation of a registered office, shall be given to the Registrar and recorded by him, and until

¹⁾ See also m. No. 13 of 1909, *infra*.

such notice is given the company shall not be deemed to have a registered office. If any registered foreign company carries on business without having a registered office, the company and every officer thereof in Queensland shall incur a penalty not exceeding five pounds for every day during which business is so carried on. — N. S. W. c. (No. 22 of 1906) 7 (1); V. f. (No. 1482) 70 (1); T. f. (59 Vic. No. 17) 9; S. A. a. (No. 557) 196 (5); W. A. a. (56 Vic. No. 8) 198 (5); N. Z. 302.

Service of process on registered foreign companies. 9. Any writ or other process issued against a registered foreign company may be served by being left at the registered office of the company with some person there, or if there is no registered office or no person is found at the registered office, by being affixed in the office of the Registrar of the Supreme Court or other Court from which the process is issued. — E. § 274; N. S. W. c. (No. 22 of 1906) 12; V. f. (No. 1482) 74; T. f. (59 Vic. No. 17) 14; S. A. a. (No. 557) 203; W. A. a. (56 Vic. No. 8) 205; N. Z. 302.

Proof of registration. 10. Production of the *Gazette* purporting to contain a copy of a certificate issued under the provisions of this Act shall be sufficient *prima facie* evidence, for the purpose of proceedings in any court of justice, or for any other purpose, of the due registration of the company mentioned in such certificate. — N. S. W. c. (No. 22 of 1906) 11; V. f. (No. 1482) 72; T. g. (59 Vic. No. 2) 19; S. A. a. (No. 557) 204; W. A. a. (56 Vic. No. 8) 206; N. Z. 303, 308.

Saving. 11. The provisions of this Act shall not be construed to diminish or affect any existing jurisdiction or authority of any court of justice, or any existing rights, liabilities, or disabilities of foreign companies, except so far as the same are expressly diminished or affected by the provisions of this Act.

Schedule.

I, _____, Registrar of Joint Stock Companies of the Colony of Queensland, hereby certify that the [name of company], duly incorporated on the [date of incorporation] under the laws of [country of incorporation], has this day been registered in the office of the Registrar of Joint Stock Companies of the Colony of Queensland, in accordance with the provisions of *The Foreign Companies Act of 1895*.

Given under my hand and seal of office at _____, this _____ day of _____, 18 ____ A.B.

m) No. 13 of 1909. An Act to amend the Law relating to Companies in certain Particulars (24th December, 1909).

Short title, construction, and commencement of Act. 1. This Act may be cited as *The Companies Act Amendment Act of 1909*, and shall be read as one with *The Companies Acts, 1863 to 1896*. This Act shall commence and take effect on and from the first day of March, one thousand nine hundred and ten.

Part I. Mortgages.

Mortgage; application of this part. 2. 1. In this part of this Act the term "mortgage" includes assignment, mortgage, charge, lien, or encumbrance; the term "debenture" includes debenture stock; the term "prescribed" means prescribed by this Act or by regulations made thereunder; the term "foreign company" means a company which is incorporated elsewhere than in Queensland. 2. Save as herein provided, this part of this Act shall extend and apply to every mortgage created by any company, whether such company is registered or incorporated in Queensland or elsewhere, and being either: a) A mortgage for the purpose of securing any issue of debentures; or b) A mortgage of uncalled share capital of the company; or c) A mortgage on any book debts of the company; or d) A floating mortgage on the undertaking or property of the company. 3. Provided that, save as hereinafter expressly mentioned, this part of this Act shall not extend or apply to: a) Any mortgage so far as it includes land, whether subject to *The Real Property Acts, 1861 to 1887*, or not; or b) Any mortgage so far as it includes any holding or interest under and subject to the laws in force relating to the occupation, leasing, and alienation of Crown lands; or c) Any mortgage, charge, or lien so far as it includes any

lease, claim, or tenement under and subject to the laws in force relating to mines and mining; or d) any bill of sale within the meaning of the laws in force relating to bills of sale of personal chattels; or e) Any lien on wool, mortgage of live stock, or lien on crops under and subject to *The Mercantile Acts, 1867 to 1896*.

Registration of mortgages. 3. 1. Every mortgage to which this part of this Act applies created after the commencement of this Act by a company shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage, together with the instrument, if any, by which the mortgage is created or evidenced, are delivered to or received by the Registrar of Joint Stock Companies at Brisbane, herein referred to as the Registrar, for registration in manner required by this Act within thirty days after the date of its creation or such other time as may be prescribed, but without prejudice to any contract or obligation for repayment of the money thereby secured; and when a mortgage becomes void under this section the money secured thereby shall immediately become payable: Provided that: a) In the case of a mortgage created out of Queensland comprising solely property situated outside Queensland, the delivery to and the receipt by the Registrar of a copy of the instrument by which the mortgage is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself and thirty days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in Queensland shall be substituted for thirty days after the date of the creation of the mortgage, as the time within which the particulars and instrument or copy are to be delivered to the Registrar; and b) Where the mortgage is created in Queensland, but comprises property outside Queensland, the instrument creating or purporting to create the mortgage may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage valid or effectual according to the law of the country in which the property is situated; and c) Where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not for the purposes of this section be treated as a mortgage on those book debts. 2. Where a series of debentures, containing or giving, by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu*, is created by a company, it shall be sufficient if there are delivered to or received by the Registrar, within thirty days or such other time as may be prescribed after the execution of the deed containing the charge, or, if there is no such deed, after the execution of any debentures of the series, the following particulars: a) The total amount secured by the whole series; and b) The dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and c) A general description of the property charged; and d) The names of the trustees, if any, for the debenture holders; together with the deed containing the charge, or, if there is no such deed, one of the debentures of the series, and the Registrar shall, on payment of the prescribed fee, enter those particulars in the register: Provided that where more than one issue is made of debentures in the series, there shall be sent to the Registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued. 3. Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per centum of the commission, discount, or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued: Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provisions be treated as the issue of the debentures at a discount. 4. The Registrar shall give a certificate under his hand of the registration of any mortgage registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with. 5. The company shall cause a copy of every certificate

of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage so registered: Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any mortgage so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage was registered. 6. It shall be the duty of the company to send to the Registrar for registration the particulars of every mortgage created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage may be effected on the application of any person interested therein. Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Registrar on the registration. 7. The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one shilling for each inspection. 8. Every company shall cause a copy of every instrument creating any mortgage requiring registration under this section to be kept at the registered office of the company in Queensland: Provided that in the case of a series of uniform debentures, a copy of one such debenture shall be sufficient.

Registration of secured debts created before the commencement of this Act.

4. 1. It shall be the duty of every company within six months after the commencement of this Act to send to the Registrar for registration a statement in the prescribed form and with the prescribed particulars of the total amount outstanding, at the commencement of this Act, of the debts of the company secured by mortgage created before the commencement of this Act, which under this part of this Act would have required registration had they been created after the commencement of this Act; and the Registrar shall, on payment of the prescribed fee, enter those particulars on the register of mortgages kept in pursuance of this part of this Act: Provided that the neglect of the company to comply with the provisions of this section shall not prejudice the rights under any such mortgage of any person in whose favour the mortgage was made. 2. If the company fails to comply with the requirements of this section, the company and every director, manager, secretary, or other person who is knowingly a party to the default shall be liable, on summary conviction, to a penalty not exceeding fifty pounds for every day during which the default continues.

Fee; register; index. 5. 1. For every registration under the two last preceding sections there shall be paid to the Registrar a fee of five shillings or such other fee as may be prescribed. 2. The Registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages created by the company and requiring registration under this part of this Act, and shall, on payment of the prescribed fee, enter the register, with respect to every such mortgage, the date of creation, the amount secured by it, short particulars of the property mortgaged, and the names of the mortgagees. 3. The Registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages registered with him under this part of this Act.

Record of particulars of mortgages etc., to which this part of this Act does not apply. 6. 1. It shall be the duty of every company within ten months after the commencement of this Act to send to the Registrar for record a statement of the prescribed form setting forth the prescribed particulars of every mortgage, charge, lien, and bill of sale to which the provisions of this part of this Act do not otherwise extend or apply, which have been given, granted, or executed by the company before the commencement of this Act and are still subsisting, and whether the same have or have not been registered under any law; and upon receipt of such statement the Registrar shall, without fee, enter those particulars in a record book to be kept for the purpose. 2. From and after the commencement of this Act it shall be the duty of every company, within thirty days after the giving, granting, or execution by the company of any mortgage, charge, lien, or bill of sale to which the provisions of this part of this Act do not otherwise extend or apply, and whether the same has or has not been registered under any law, to send to the Registrar for record a statement, in the prescribed form, setting forth the prescribed particulars with respect to such mortgage, charge, lien, or bill of sale; and upon receipt of such statement the Registrar shall, without fee, enter those particulars in a re-

cord book to be kept for the purpose. 3. The Registrar shall also from time to time, without fee, upon a request by the company, accompanied by such verification of the facts as may be prescribed, record in the said record book particulars of the discharge or other satisfaction in whole or in part of any such mortgage, charge, lien, or bill of sale. 4. Provided always that the neglect of the company to comply with any of the provisions of this section shall not prejudice the rights, if any, under any such mortgage, charge, lien, or bill of sale, of any person in whose favour the same was given, granted, or executed. 5. If the company fails to comply with the requirements of subsections one or two hereof, the company and every director, manager, secretary, or other person who is knowingly a party to the default shall be liable, on summary conviction, to a penalty not exceeding ten pounds for every day during which the default continues. 6. The record book kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, and for this purpose, but to this extent only, shall be deemed to be part of the register of mortgages kept in pursuance of this part of this Act. 7. This section does not apply to foreign companies.

Registration of enforcement of security. 7. 1. If any person obtains an order for the appointment of a receiver of manager of the property of a company, or appoints such a receiver, or manager, under any powers contained in any instrument, he shall, within seven days or such other time as may be prescribed from the date of the order or of the appointment under the powers contained in the instrument, give notice of the fact to the Registrar, and the Registrar shall, on payment of the fee of two shillings and six pence or such other fee as may be prescribed, enter the fact in the register of mortgages. 2. If any person makes default in complying with the requirements of this section, he shall be liable, on summary conviction, to a penalty not exceeding five pounds for every day during which the default continues.

Filing of accounts of receivers and managers. 8. 1. Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half-year while he remains in possession, and also on ceasing to act as receiver or manager, file with the Registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the Registrar notice to that effect, and the Registrar shall enter the notice in the register of mortgage. 2. Every receiver or manager who makes default in complying with the provisions of this section shall be liable, on summary conviction, to a penalty not exceeding fifty pounds.

Rectification of register of mortgages. 9. A judge of the Supreme Court, on being satisfied that the omission to register a mortgage within the time hereinbefore required, or that the omission or misstatement of any particular with respect to any such mortgage, was accidental or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or members of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified.

Entry of satisfaction. 10. The Registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof.

Penalties. 11. 1. If any company makes default in sending to the Registrar for registration the particulars of any mortgage created by the company, and of the issues of debentures of a series, requiring registration with the Registrar under the foregoing provisions of this part of this Act, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall be liable, on summary conviction, to a penalty not exceeding fifty pounds for every day during which the default continues. 2. Subject as aforesaid, if any company makes default in complying with any of the requirements of this part of this Act as to the registration with the Registrar of any mortgage created by the company, the company, and every director, manager, and other officer of the company who knowingly and wilfully authorized or permitted the default,

shall, without prejudice to any other liability, be liable, on summary conviction, to a penalty not exceeding one hundred pounds. 3. If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock requiring registration with the Registrar under the foregoing provisions of this part of this Act, without a copy of the certificate of registration being endorsed upon it, where such endorsement is compulsory under the foregoing provisions, he shall, without prejudice to any other liability, be liable, on summary conviction, to a penalty not exceeding one hundred pounds.

Company's register of mortgages. 12. 1. Every limited company shall keep a register of mortgages, and enter therein all mortgages specifically affecting property of the company, giving in each case a short description of the property mortgaged, the amount of the mortgage, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto. 2. If any director, manager, or other officer of the company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be liable, on summary conviction, to a penalty not exceeding fifty pounds. 3. This section applies and extends to all mortgages, charges, liens, and encumbrances whatsoever, whether requiring to be registered under this part of this Act or not. 4. This section does not apply to foreign companies. 5. Section forty-two of *The Companies Act, 1863* is repealed.

Right to inspect copies of instruments creating mortgages and charges and company's register of mortgages. 13. 1. The copies of instruments creating any mortgage requiring registration under this part of this Act with the Registrar, and the register of mortgages kept in pursuance of the last preceding section, shall be open at all reasonable times to the inspection of any creditor or member of the company without fee; and shall also be open to the inspection of any other person on payment of such fee, not exceeding two shillings and six pence for each inspection as the company may prescribe. 2. If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every director and manager of the company authorizing or knowingly and wilfully permitting the refusal, shall be liable, on summary conviction, to a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which the refusal continues; and in addition to the above penalty, any judge of the Supreme Court sitting in chambers may, by order, compel an immediate inspection of the copies or register.

Right of debenture holders to inspect the register of debenture holders and to have copies of trust deed. 14. 1. Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the articles, be open to the inspection of the registered holder of any such debentures and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of sixpence for every one hundred words required to be copied. 2. A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust deed of the sum of one shilling or such less sum as may be prescribed by the company, or where the trust deed has not been printed, on payment of sixpence for every one hundred words required to be copied. 3. If inspection is refused or a copy is refused or not forwarded, the company shall on summary conviction, be liable to a penalty not exceeding five pounds and to a further penalty not exceeding two pounds for every day during which the refusal continues, and every director, manager, secretary, or other officer of the company who knowingly authorizes or permits the refusal shall incur the like penalty. 4. This section does not apply to foreign companies.

Perpetual debentures. 15. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the commencement of this Act, shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.

Power to reissue redeemed debentures in certain cases. 16. 1. Where either before or after the commencement of this Act a company has redeemed any debentures

tures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of reissue, and where a company has purported to exercise such a power the company shall have power, and shall be deemed always to have had power, to reissue the debentures either by reissuing the same debentures or by issuing other debentures in their place, and upon such a reissue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued. 2. Where with the object of keeping debentures alive for the purpose of reissue they have, either before or after the commencement of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a reissue for the purposes of this section. 3. Where a company has either before or after the commencement of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited. 4. The reissue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, whether the reissue or issue was made before or after the commencement of this Act, shall be treated as the issue of a new debenture for the purposes of stamp duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued: Provided that any person lending money on the security of a debenture reissued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without becoming liable to payment of the stamp duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to the proper stamp duty and penalty. 5. Nothing in this section shall prejudice: a) The operation of any judgment or order of a court of competent jurisdiction pronounced or made before the commencement of this Act as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or b) Any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

Specific performance of contract to subscribe for debentures. 17. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance.

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge. 18. 1. Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in every winding-up are under the provisions of *The Companies Acts, 1863 to 1896*, relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures. 2. The periods of time mentioned in the said provisions of the said Acts shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be. 3. Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Effect of floating charge. 19. Where a company is being wound up, a floating charge on the undertaking or property of the company created within three months of the commencement of the winding-up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five pounds per centum per annum.

Regulations. 20. The Governor in Council may from time to time make regulations: a) Prescribing forms to be used and particulars of instruments to be furnished for the purposes of this part of this Act; b) Prescribing times for the registration of any instrument, or the giving of any notice, or the doing of any act; c) Prescribing a scale of fees to be paid for filing, lodging, registering, searching for or inspecting documents, and for all matters transacted under this part of this Act; and d) Generally for carrying this part of this Act into effect. Such regulations when published in the *Gazette* shall have the same effect as if they were enacted in this Act, shall be judicially noticed, and shall not be questioned in any proceedings whatsoever. A copy of all such regulations shall be laid before both Houses of Parliament within forty days after the publication thereof, if Parliament is then sitting, or if not then sitting then within forty days from the commencement of the next following session of Parliament.

Power to modify provisions in certain cases. 21. If with respect to any foreign company or class of foreign companies the Governor in Council is satisfied that the enforcement of strict compliance with the foregoing provisions of this part of this Act relating to the registration of mortgages would occasion unnecessary accounting, and that the financial position of such company or class of companies can be satisfactorily disclosed by the observance of a modification of such provisions, the Governor in Council may, by Order in Council, prescribe such modification of such provisions as he thinks proper and sufficient for the purpose, and thereupon the observance by such company or class of companies of the requirements of such Order shall be deemed to be a compliance with the aforesaid provisions of this part of this Act. Every such Order in Council shall, as to the company or class of companies referred to therein, be deemed to be embodied in this Act, and any contravention thereof shall entail the like penalties.

Part II. General.

Amendment of 27 Vic. No. 4, s. 33. 22. The following provision is added to section thirty-three of The Companies Act, 1863: This section shall apply to all companies, including companies registered under *The Foreign Companies Act of 1867*, or *The British Companies Act of 1886*, or *The Foreign Companies Act of 1895*: Provided that in the case of companies whose head office is not in Queensland the notice of increase aforesaid shall be given within fifteen days after the receipt by the company in Queensland of a copy of the resolution or other authority authorizing such increase.

Fees. 23. 1. There shall be paid to the Registrar by a company, in respect of the several matters hereunder mentioned, the several fees set against such matters respectively or such smaller fees as the Governor in Council may from time to time, by Order in Council direct.

Table of fees to be paid to the Registrar of Joint Stock Companies.

I. By a company having a share-capital.

	£	s.	d.
For registration of a company whose nominal share capital does not exceed £ 2000	2	0	0
For registration of a company whose nominal share capital exceeds £ 2000, the following fees, regulated according to the amount of nominal share capital, that is to say:			
For every £ 1000 of nominal share capital, or part of £ 1000, up to £ 5000	1	0	0
For every £ 1000 of nominal share capital, or part of £ 1000, after the first £ 5000, up to £ 100,000		0	5
For every £ 1000 of nominal share capital, or part of £ 1000, after the first £ 100,000		0	1
For registration of any increase of share capital made after the first registration of the company, the same fees per £ 1000, or part of £ 1000, as would have been payable if the increased share capital had formed part of the original share capital at the time of registration:			
Provided that no company shall be liable to pay in respect of nominal share capital, on registration or afterwards, any greater amount of fees than fifty pounds, taking into account in the case of fees payable on an increase of share capital after registration the fees paid on registration.			
For registering any document required or authorized by any Act to be registered, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding-up		0	5
For making a record of any fact required or authorized by any Act to be recorded by the Registrar		0	5

II. By a company not having a share capital.

For registration of a company whose number of members, as stated in the articles, does not exceed twenty	£ s. d. 2 0 0
For registration of a company whose number of members, as stated in the articles, exceeds twenty, but does not exceed one hundred	5 0 0
For registration of a company whose number of members, as stated in the articles, exceeds one hundred, but is not stated to be unlimited, the above fee of five pounds, with an additional five shillings for every fifty members or less number than fifty members after the first one hundred.	
For registration of a company in which the number of members, is stated in the articles to be unlimited	20 0 0
For registration of any increase on the number of members made after the registration of the company in respect of every fifty members, or less than fifty members of that increase	0 5 0
Provided that no company shall be liable to pay on the whole a greater fee than twenty pounds in respect of its number of members, taking into account the fee paid on the first registration of the company.	
For registering any document required or authorized by any Act to be registered, other than the memorandum or the abstract required to be filed with the Registrar by a receiver or manager or the statement required to be sent to the Registrar by the liquidator in a winding-up	0 5 0
For making a record of any fact required or authorized by any Act to be recorded by the Registrar	0 5 0

2. This section shall apply to all companies, including companies registered under *The Foreign Companies Act of 1867*, or *The British Companies Act of 1886*, or *The Foreign Companies Act of 1895*. 3. The second paragraph of section sixteen of and Tables B and C of the Schedule of *The Companies Act, 1863*, section seventy-two of *The Stamp Act, 1894*, section five of *The British Companies Act of 1886*, and section five of *The Foreign Companies Act of 1895*, are repealed. 4. This section shall commence and take effect on and from the passing of this Act.

When foreign company may hold land; companies may be wound up; application of proceeds of lands. 24. After section nine of *The Foreign Companies Act of 1895*, the following sections are inserted: 9A. A registered foreign company, upon receiving a license from the Governor in Council in that behalf, but not otherwise, shall be competent to take, hold, convey, and transfer land in Queensland for any estate of freehold or less than freehold. The Governor in Council is hereby empowered to grant any such license, subject to such terms and conditions, including the power of revocation for breach thereof, as he thinks fit to impose. 9B. The Supreme Court has jurisdiction to wind up a registered foreign company so far as such company carries on operations within Queensland. 9C. In the event of the winding-up of a registered foreign company, all land of the company within Queensland shall, subject to any valid mortgage encumbrance or charge subsisting thereon, be applicable in the first instance in payment and discharge of the debts of the company contracted within Queensland, in priority to any other debts of the company, except debts secured by such mortgage, encumbrance, or charge.

Distribution of estate of deceased person owning shares not fully paid up. 25. The executor or administrator of the estate of any deceased person who was registered as the holder of shares not fully paid up in any company may distribute the assets of the estate as soon as such executor or administrator has procured the registration of some other person as the holder of such shares without reserving any portion of such estate for the payment of any calls which may be made after the date of such registration, wheter made by the company or its directors or by its liquidators in a winding-up. But nothing herein contained shall affect any right which the company or its liquidators may have to follow the assets of such deceased person into the hands of any persons to or amongst whom the same have been transferred or distributed.

Registrar may strike defunct company off register. 26. 1. Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation. 2. If the Registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received, and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the *Gazette* with a view to strik-

ing the name of the company off the register. 3. If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the *Gazette*, and send to the company by post, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved. 4. If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period or six consecutive months after notice by the Registrar demanding the returns has been sent by post to the company or to the liquidator at his last known place of business, the Registrar may publish in the *Gazette* and send to the company a like notice as is provided in the last preceding subsection. 5. At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the *Gazette*, and on the publication in the *Gazette* of this notice the company shall be dissolved: Provided that the liability, if any, of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved. 6. If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, a judge of the Supreme Court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise, that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if its name had not been struck off; and the judge may by the order give such instructions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off. 7. A letter or notice under this section may be addressed to the company at its registered office, or if no office has been registered, to the care of some director or officer of the company, or if there is no director or officer whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum. 8. Section forty-two of *The Companies Act Amendment Act, 1889*, is repealed.

6. Western Australia. a) 56 Vic. No. 8. An Act to consolidate and amend the law relating to Companies (13th January, 1893).

Part I. Preliminary.

1. = S. A. a. (No. 557) § 1, except: "1893" substituted for "1892".

2. = S. A. a. (No. 557) § 2, except that the Act of Western Australia after the words "Part I., etc." gives the numbers of the sections dealing with the particular matter.

Interpretations. 3. In this Act and the Schedules hereto, and any rules made hereunder, the following terms have the meanings hereinafter respectively assigned to them, if not inconsistent with the context or subject matter: "Articles" means the articles of association of a company. In Parts III., VII., X., and XI., "Company" means a company registered under *The Joint Stock Companies Ordinance, 1858*, *The Mining Companies Act, 1888*, or this Act. In Part IX., "Company" means a company registered as a no-liability company under *The Mining Companies Act, 1888*, or this Act. "Colony" means the Colony of Western Australia. (The remainder of the section is identical with S. A. a. (No. 557) § 3, beginning with the definition of "contributory", except: under "deed of settlement" the words "*The Joint Stock Companies Ordinance, 1858*", is substituted for "*The Companies Act, 1864*"; that "foreign company" is defined: "shall mean any joint stock company, or corporation duly incorporated for trading or other business purposes according to the laws in force in the country in which it is incorporated, other than a company incorporated in Western Australia"; under "memorandum" the same change is to be made as indicated under "deed of settlement"; under "Registrar" the words "and any Acting or Deputy Registrar of Companies" are omitted; under "representative" the words

“Curator of Intestates Estates” are substituted for “Public Trustee”; and, finally, a definition of “ordinance” is included before the definition of “prescribed” as follows: “Ordinance” means *The Joint Stock Companies Ordinance, 1858*, and any amendment thereof”. — For interpretation of terms, see texts of acts.

4. 1. = S. A. a. (No. 557) § 4, except: for VII. is substituted the following provision: “Table B in the Schedule annexed to the Ordinance, so far as the same applies to any company existing at the commencement of this Act”. 2. The repeal effected by this section shall not affect any of the provisions of *The Mining Companies Act, 1888*, relating to the winding-up of companies already registered thereunder except to the extent to which the same relate to the winding-up of no-liability companies registered under the said Act and not under liquidation at the coming into operation of this Act.

Act not to apply to certain societies and companies. 5. Subject to the provisions of the next following section and except as to Part VI. and the provisions therein contained or incorporated, this Act shall not apply to any friendly society, benefit society, or building society, not to any company or co-partnership which carries on the business of life insurance, either alone or together with any other business, unless such company is already registered under the Ordinance, nor to any company or co-partnership formed or to be formed for the purpose of carrying on the business of banking. — E. § 1; N. S. W. a. (No. 40 of 1899) 3, 4; V. a. (No. 1074) 3, 4; T. a. (33 Vic. No. 22) 3, 4; S. A. a. (No. 557) 5; Q. e. (27 Vic. No. 4) 2, 3; N. Z. 3, 4.

References in Acts to the Ordinance to be read as references to this Act. 6. Where any unrepealed Act enacts that the Ordinance or any of the provisions thereof shall apply to life assurance or other companies, or requires or empowers anything to be done or any penalties to be recovered by reference to such Ordinance or provisions, such enactments shall be deemed to refer to this Act and the corresponding portions of this Act.

7. = S. A. a. (No. 557) § 7, except: “Colony” substituted for “Province”.

8. = S. A. a. (No. 557) § 8, except: “Registrar of Supreme Court” substituted for “Master of Supreme Court”; “Western Australia” substituted for “South Australia”; the words “and the Governor may appoint an Acting or Deputy Registrar of Companies” are omitted.

Part II. Constitution and Incorporation of Companies.

Memorandum of association.

9—10. = S. A. a. (No. 557) § 9—10.

11. = S. A. a. (No. 557) § 11, except that at end are added the words “the memorandum may be in one of the forms of the sixth Schedule”. — E. § 3; N. S. W. a. (No. 40 of 1899) 7; V. a. (No. 1074) 7; T. a. (33 Vic. No. 22) 8; S. A. a. (No. 557) 11; Q. e. (27 Vic. No. 4) 7; N. Z. 15, 17, 18. — **ULTRA VIRES.** — A company formed for carrying on mining operation has implied power to borrow money if not prohibited by its articles of association. — *Ida H. Gold Mining Co. v. Jones*, 7 W. A. L. R. 329.

Company not to be registered until four per cent. of nominal capital paid. 12. No company shall be registered as a no-liability company until it is proved by statutory declaration to the satisfaction of the Registrar that five per cent. of the nominal capital of the company has been paid up and lodged to the credit of the company in some bank approved by the Registrar.

13—14. = S. A. a. (No. 557) § 12—13.

15. = S. A. a. (No. 557) § 14, except that in (2) the word “safe” is substituted for “save”, an obvious misprint.

Articles of association.

16. = S. A. a. (No. 557) § 15, except that in (1) “section eighteen” is substituted for “section seventeen”.

17. = S. A. a. (No. 557) § 16.

18. 1—2. = S. A. a. (No. 557) § 17 (1—2). 3. Any such meeting shall be convened: a) By the promoters of the company or a majority of them by advertisement published not more than fourteen or less than seven days before the date of such meeting in one daily newspaper in Perth; or b) By such person and in such manner as shall be provided in the prospectus of the company, or in any agreement by which the persons who have agreed to take shares shall be bound. 4—7. = S. A. a. (No. 557) § 17 (4—7).

19. = S. A. a. (No. 557) § 18.

General provisions.

20—22. = S. A. a. (No. 557) § 19—21.

23. = S. A. a. (No. 557) § 22, except: “makes” is substituted for “make”.

24. = S. A. a. (No. 557.) § 23.

Part III. Management and Administration.

25. = S. A. a. (No. 557) § 24, except: “registered under this Act” is omitted.

26. = S. A. a. (No. 557) § 25, except: “registered under this Act” is omitted.

27. = S. A. a. (No. 557) § 26, except: “a company shall be deemed” is substituted for “any company registered under this Act shall be deemed”.

28. = S. A. a. (No. 557) § 27.

29. [As amended by e. (63 Vic. No. 54) § 9.] = S. A. a. (No. 557) § 28, except: at the end of (1) is added the following: “and of the amount paid or agreed to be considered as paid on the shares of each member”; “director or manager” is substituted for “director or secretary”.

30. = S. A. a. (No. 557) § 29, except: after the words “the above list and summary shall be” are inserted the words “contained in a separate part of the register and shall be”.

31—32. = S. A. a. (No. 557) § 30—31.

33. = S. A. a. (No. 557) § 32, except: “or shares” is inserted after “share”.

34. = S. A. a. (No. 557) § 33, except: in (1) “section 30” is substituted for “section 29”.

35. = S. A. a. (No. 557) § 34, except: “Perth” is substituted for “Adelaide”; “thirty days in each year, provided that the register shall not be closed at any one period for more than seven consecutive days” is substituted for “seven days in any one month”.

36—38. = S. A. a. (No. 557) § 35—37.

39. = S. A. a. (No. 557) § 38, except: in (1) “in some town or place in the Colony, to be approved by the Registrar” is inserted after “registered office”; in (2) “days” is substituted for “day”, and “Perth or in any district in which such office is situated, and shall be given to the Registrar, and if approved recorded by him” for “Adelaide, and shall be given to the Registrar, and recorded by him”.

40. = S. A. a. (No. 557) § 39, except: “registered under this Act” is omitted; “to be so present” is inserted after “such omission”.

41. = S. A. a. (No. 557) § 40.

Accounts to be kept by company. 42. The directors of every company shall cause true account to be kept: Of the stock in trade of the company; of the sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure take place; and of the assets and liabilities of the company. And for any default under this section any director, who shall knowingly and wilfully permit such default, shall be liable to a penalty not exceeding ten pounds for each day for which such default continues. The books of accounts shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to inspection of members during the hours of business.

43. = S. A. a. (No. 557) § 41.

44. = S. A. a. (No. 557) § 42, except: “under the Ordinance or this Act” is substituted for “and deposit, provident, or benefit society under *The Companies Act, 1864*”.

45—48. = S. A. a. (No. 557) § 43—46.

49. = S. A. a. (No. 557) § 47, except: in (1) “four” is substituted for “six” in both places where it occurs; in (2) “year” is substituted for “six months”.

50. = S. A. a. (No. 557) § 48 (1, 2, 3, 5), except: in (1) “contained in Table B in the Schedule to the Ordinance” is substituted for “contained in Table A in the first Schedule to *The Companies Act, 1864*”; in (3) “five members” is substituted for “two members”, and the following is added: “In computing the majority, where a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the articles”.

51—54. = S. A. a. (No. 557) § 49—52.

55. = S. A. a. (No. 557) § 53, except: “Colony” is substituted for “Province”.

56—63. = S. A. a. (No. 557) § 54—61.

64. = S. A. a. (No. 557) § 62, except: “the Ordinance, or *The Mining Companies Act, 1888*” is substituted for “*The Companies Act, 1864*, or *The Mining Companies Act, 1881*”; “or magistrate of a Local Court or justice of the peace” is substituted for “or special magistrate”.

65—66. = S. A. a. (No. 557) § 63—64.

67. = S. A. a. (No. 557) § 65, except: in (3) “Colony near” is substituted for “Province nearest”.

68—69. = S. A. a. (No. 557) § 66—67.

70—71. = S. A. a. (No. 557) § 68—69.

72. = S. A. a. (No. 557) § 70, except: in (1) “70” is substituted for “68”; in (4) “71” is substituted for “69”.

73. = S. A. a. (No. 557) § 71.

74. = S. A. a. (No. 557) § 72, except: “subject as in this Act mentioned” is substituted for “subject as is in this Act mentioned”.

75. = S. A. a. (No. 557) § 73, except: “108” is substituted for “106”.

76—77. = S. A. a. (No. 557) § 74—75.

78. = S. A. a. (No. 557) § 76, except: the whole of the sentence beginning with “if such notice be not given” is omitted.

79. = N. S. W. a. (No. 40 of 1899) § 23, except: “formed or registered under this Part of this Act” is omitted; “of this Part” is omitted after “provisions”; “hereby” is omitted before “required”.

80—81. = S. A. a. (No. 557) § 78—79.

Part IV. Companies authorised to Register under this Act.

82. = S. A. a. (No. 557) § 80.

83. = S. A. a. (No. 557) § 81, except: “coming into operation of this Act, including companies registered under the Ordinance and consisting of five or more members, and any company hereafter formed in pursuance of any act of Parliament other than *The Mining Companies Act, 1888*, or this Act” is substituted for “coming into operation of *The Companies Act, 1864*, and consisting of five or more members, and any company thereafter formed in pursuance of any Act of Parliament other than the last mentioned Act, or *The Mining Companies Act, 1881*, or this Act”.

84. = S. A. a. (No. 557) § 82.

85. = S. A. a. (No. 557) § 83, except: in (1) the following is added at the end: “distinguishing, in cases where such shares are numbered, each share by its number”.

86—89. = S. A. a. (No. 557) § 84—87.

90. = S. A. a. (No. 557) § 88, except: “Colony” is substituted for “Province”.

91—93. = S. A. a. (No. 557) § 89—91.

94. = S. A. a. (No. 557) § 92, except: “things in action” is substituted for “choses in action”; “as incorporated” is substituted for “so incorporated”; the following is added at the end: “under this Act for all the estate and interest of the company therein”.

95. = S. A. a. (No. 557) § 93, except: “or any member thereof” is omitted; “or affect or prejudice such” is omitted; “its” is substituted for “company’s”.

96. = S. A. a. (No. 557) § 94.

97. = S. A. a. (No. 557) § 95, except: in (5) “bankruptcy” is substituted for “insolvency”, and “trustees or assignees of bankrupt contributories” for “trustees of insolvent contributories”.

98—99. = S. A. a. (No. 557) § 96—97.

Part V. The Winding-up of Companies.

100. = S. A. a. (No. 557) § 98, except: “1888, but shall apply to all other companies registered under the said Act, or the Ordinance, or this Act, if not inconsistent with the context or subject-matter” is substituted for “1881”.

Liability of members.

101. (1—3) = S. A. a. (No. 557) § 99 (1—3). (4) = S. A. a. (No. 557) § 99 (4), except: “if the company be limited by shares” is omitted. (5) = S. A. a. (No. 557) § 99 (6).

102. = S. A. a. (No. 557) § 100, except: “or under Act No. 22 of 1870—71” is omitted.

103—104. = S. A. a. (No. 557) § 101—102.

105. = S. A. a. (No. 557) § 103, except: "bankrupt" is substituted for "insolvent"; "or assignee" is inserted after "trustee"; "*The Bankruptcy Act, 1892*" is substituted for "*The Insolvent Act, 1886*".

106. = S. A. a. (No. 557) § 104, except: *The Married Women's Property Act, 1892* is substituted for "*The Married Women's Property Act, 1883—84*".

Winding-up under order of court.

107—108. = S. A. a. (No. 557) § 105—106.

109. = S. A. a. (No. 557) § 107, except: "but no such contributory" is substituted for "but no contributory"; "the former holder" is substituted for "a former holder".— E. § 137; N. S. W. a. (No. 40 of 1899) 89, 90; V. a. (No. 1074) 78; T. a. (33 Vic. No. 22) 114, 115; S. A. a. (No. 557) 107; Q. e. (27 Vic. No. 4) 81, f. (53 Vic. No. 18) 43; N. Z. 179, 180. — The petition for winding up must be made in open court. — *In re Diamond Express, Ltd.*, 6 W. A. L. R. 2.

110—111. = S. A. a. (No. 557) § 108—109.

112. = S. A. a. (No. 557) § 110, except: "appointment" is substituted for "nomination", and "appoint" for "nominate".

113—115. = S. A. a. (No. 557) § 111—113.

116. = S. A. a. (No. 557) § 149, except: "an order has been made for winding up a company" is substituted for "after the commencement of the winding up of a company".

Power of Court to transmit winding-up to Court of Bankruptcy. 117. 1. Where the Court makes an order for winding up a company, it may direct all or any subsequent proceedings for winding up the same to be had before the Bankruptcy Court or any Local Court of Bankruptcy, and upon such order being made, the Bankruptcy Court or the Local Court of Bankruptcy therein named shall have the same jurisdiction and may exercise the same powers with respect to winding up such company, or any proceedings in relation to such winding-up, as the Court by which such order is made has and could have exercised. 2. = S. A. a. (No. 557) § 114 (2), except: "Bankruptcy Court or a Local Court of Bankruptcy" is substituted for "Court of Insolvency or a Local Court of Insolvency", and "in bankruptcy matter" for "in an insolvency matter".

Official liquidators.

118. = S. A. a. (No. 557) § 115.

119. = S. A. a. (No. 557) § 116, except: "things in action" is substituted for "choses in action".

120. = S. A. a. (No. 557) § 117, except: in (3) "things in action" is substituted for "choses in action"; in (5) "bankruptcy or" is inserted after "matter of the", and "bankrupt or" after "debt due from the". Subsection 8 reads as follows: 8. With the sanction of the Court, to employ a solicitor to assist him in the performance of his duties. The sanction aforesaid must be obtained before employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

121—124. = S. A. a. (No. 557) § 118—121.

125. = S. A. a. (No. 557) § 122. — E. § 165; N. S. W. a. (No. 40 of 1899) 36, 110; V. a. (No. 1074) 96; T. a. (33 Vic. No. 22) 134; S. A. a. (No. 557) 122; Q. e. (27 Vic. No. 4) 100; N. Z. 86 (5), 199 (2). — Under an agreement between a director of a company and his co-directors it was provided that the former should purchase certain machinery for the company, and that on the issue of fresh capital he might apply for certain contributing shares, the money he advanced for the purchase of the machinery to be applied in payment of the shares and of the calls as they became due. Shares were allotted to him under this agreement. *Held*, that the advances might be regarded as payments in cash, and that the shareholder was entitled to set off the amounts against the sum claimed by the liquidator in respect of the shares. — *Randall v. Santa Claus G.M. Co.*, 8 W. A. L. R. 36. On the general rule set forth in subsection (3), see *In re West Australian Lighterage, etc., Co., Ltd.*, 5 W. A. L. R. 132.

126. = S. A. a. (No. 557) § 123.

127. = S. A. a. (No. 557) § 124, except: "and appointed by the Governor to be a bank for receiving such deposits" is omitted.

128—131. = S. A. a. (No. 557) § 125—128.

132. = S. A. a. (No. 557) § 129, except: "things in action" is substituted for "choses in action".

133—136. = S. A. a. (No. 557) § 130—133.

Voluntary winding-up of company.

137—138. = S. A. a. (No. 557) § 134—135.

139. = S. A. a. (No. 557) § 150, except: "when a company is wound up voluntarily, the company shall from the date of the commencement of such winding-up" is substituted for the opening clauses of the S. A. Act, down to the words "section 149".

140. = S. A. a. (No. 557) § 136.

141. = S. A. a. (No. 557) § 137, except: in (6) "or imposed upon" is inserted after "given to".

142—145. = S. A. a. (No. 557) § 138—141.

146. = S. A. a. (No. 557) § 142, except: "or shareholder" is inserted after "contributory" in the first place in which the latter word occurs; "other" is inserted after "or in such"; "shareholder of the company" is substituted for "member of the company".

147—149. = S. A. a. (No. 557) § 143—145.

150. = S. A. a. (No. 557) § 146. — E. § 197; N. S. W. a. (No. 40 of 1899) 144; V. a. (No. 1074); T. a. (33 Vic. No. 22) 172; S. A. a. (No. 557) 146; Q. e. (27 Vic. No. 4) 135; N. Z. 233. — The petitioning creditors seeking to have a company wound up by the Court, where the company is in voluntary liquidation, must show a *prima facie* case that they will be prejudiced by a voluntary winding-up. — *Great Fingall Association G.M. Co. v. Harness*, 4 C. L. R. 223.

151. = S. A. a. (No. 557) § 147.

Court may have regard to wishes of creditors, members, or contributories. 152. The court may, in determining whether a company is to be wound up under order of the Court or voluntarily, and also in the appointment of an official liquidator or official liquidators, and in all other matters relating to a winding-up, either under order of the Court or voluntarily, have regard to the wishes of the creditors, members, or contributories, as proved to it by sufficient evidence, and may direct meetings of the creditors, members, or contributories to be summoned, held, and regulated in such manner as the Court may direct, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and to report the result of such meeting to the court. In the case of creditors regard shall be had to the value of the debts due to each creditor, and in the case of members or contributories to the number of votes conferred on each member or contributory by the articles of the company. — E. § 145; N. S. W. a. (No. 40 of 1899) 100; V. a. (No. 1074) 86; T. a. (33 Vic. No. 22) 124; S. A. a. (No. 557) 153 (1); Q. e. (27 Vic. No. 4) 90; N. Z. 185. — Where a large majority of the shareholders of a company in voluntary liquidation desired that the voluntary liquidation should be continued, but nearly all were in some degree holders of shares in respect of which a liability was asserted, and a substantial body of creditors desired a compulsory winding-up order, it was held, that the discretion of the Judge in ordering a compulsory winding-up would not be disturbed on appeal. — *Great Fingall Association G. M. Co. v. Harness*, 4 C. L. R. 223.

Provisions applying to winding-up, whether under order of the Court or voluntary.

153—155. = S. A. a. (No. 557) § 148, 151—152.

156. = S. A. a. (No. 557) § 153 (2—3), except: "it shall be his duty to summon" is substituted for "he shall summon".

157. = S. A. a. (No. 557) § 154.

No call in certain cases. 158. Unless the contrary shall be provided by the memorandum or articles, no call shall be made for the purpose only of placing shares not fully paid up upon an equality with shares issued as paid up to a greater amount in cases where such greater amount shall not have been actually paid in cash. — S. A. a. (No. 557), 155.

159—161. = S. A. a. (No. 557) § 156—158.

162. = S. A. a. (No. 557) § 159, except: "six" is substituted for "five", and "five" for "four".

163—164. = S. A. a. (No. 557) § 160—161.

165—167. = S. A. a. (No. 557) § 163—165.

168. = S. A. a. (No. 557) § 166, except: "thing in action" is substituted for "choses in action" in both places where it occurs.

169—171. = S. A. a. (No. 557) § 167—169.

172. = S. A. a. (No. 557) § 170, except: "section 8" is substituted for "section 6", "1880" for "1878", "1893" for "1892", and "*The Joint Stock Companies Ordinance, 1858*" for "*The Companies Act, 1864*".

173—177. = S. A. a. (No. 557) § 171—175.

178. = S. A. a. (No. 557) § 176, except: “and of the *Arbitration Act, 1891*”, is omitted; in lieu of “and the *Arbitration Act, 1891*, shall apply to the case accordingly” is substituted the following: “and an umpire to be chosen by the arbitrators; and the dissentient member shall in writing appoint an arbitrator, and give the liquidator written notice thereof, and the liquidator shall within 14 days after receipt of such notice, appoint an arbitrator on his part and give notice of such appointment to the dissentient member. The submission to arbitration may be made a rule of the court, and the umpire shall be appointed and the reference conducted in the manner by the 17th and 18th sections of *The Railways Act, 1878*, directed with respect to arbitrations under that Act”.

179. = S. A. a. (No. 557) § 177.

180. = S. A. a. (No. 557) § 178, except: in (1) and (2) “bankruptcy” is substituted for “insolvency”.

181. = S. A. a. (No. 557) § 179, except: “the Ordinance” is substituted for “*The Companies Act, 1864*”.

182—186. = S. A. a. (No. 557) § 180—184.

187. = S. A. a. (No. 557) § 185, except: “Colony” is substituted for “Province, and a list thereof filed with the Registrar”.

188—190. = S. A. a. (No. 557) § 186—188.

Part VI. The Winding-up of unregistered Companies.

191. = S. A. a. (No. 557) § 189, except: “the Ordinance, *The Mining Companies Act, 1888*”, is substituted for “*The Companies Act, 1864, The Mining Companies Act, 1881*”; in (4) b) “or” is omitted between “secured” and “compounded”. This latter is probably a typographical error.

192. = S. A. a. (No. 557) § 190, except: in (2) “bankruptcy” is substituted for “insolvency”, and “a bankrupt” for “an insolvent”.

193—194. = S. A. a. (No. 557) § 191—192.

195. = S. A. a. (No. 557) § 193, except: “things in action” is substituted for “choses in action”.

196. = S. A. a. (No. 557) § 194.

Part VII. Striking defunct Companies off the Register.

197. = S. A. a. (No. 557) § 195, except: in (1) “of his own knowledge or upon information supplied in writing by a creditor or shareholder” is inserted after “Registrar”; in (2) “two months” is substituted for “one month (or, in case the registered office of the company is in the Northern Territory, within six months)” in both places where it occurs; in (3) “or, if the registered office of the company is in the Northern Territory, six months” is omitted.

Part VIII. Foreign Companies.¹⁾

198. 1—2. = S. A. a. (No. 557), § 196 (1—2)., except: in introductory paragraph “subject to the provisions of section 212” is inserted before “a foreign company”, and Colony” is substituted for “Province”; in 1. “Colony” is substituted for “Province” in both places where it occurs; in 2. a) the entire sentence beginning with “or if the company is not incorporated” is omitted. 3. (as amended by b. [60 Vic. No. 2] § 2) The said declaration shall be made before a notary public, British consul, vice-consul, consular agent, commissioner for taking affidavits in the Supreme Court of said Colony, or other person lawfully authorised to take the same. 4. The attorney so appointed shall deposit in the office of the Registrar the power of attorney with the said declaration indorsed thereon or annexed thereto, and a certified copy of the certificate of incorporation of the company, or a document of similar effect, or the act of incorporation of the company. 5. (as amended by b. [60 Vic. No. 2] § 3) The company shall have an office or place of business in some town or place to be approved of by the Registrar in the said Colony where all legal proceedings may be served upon and all notices addressed or given to the company, and the said attorney shall give notice in three consecutive issues of the *Government Gazette*

¹⁾ See also the following Acts, reprinted *infra*: b. (60 Vic. No. 2); c. (61 Vic. No. 35); d. (62 Vic. No. 28); e. (63 Vic. No. 54); f. (2 Edw. 7, No. 19).

and of a daily newspaper circulating in Perth stating where such office or place of business is situated, and a copy of each issue of the *Government Gazette* and of each daily newspaper shall be deposited in the office of the Registrar, and a fee of five shillings shall be payable in respect of all copies so filed. 6. Is added by f. (2 Edw. 7, No. 19) § 2, *infra*, q. v.) — E. § 274; N. S. W. c. (No. 22 of 1906) 7; V. f. (No. 1482) 70; T. f. (59 Vic. No. 17) 5; S. A. a. (No. 557) 196; Q. l. (59 Vic. No. 2) 3—7; N. Z. 298, 305. — A company engaging in one transaction on the Colony is not thereby deemed to be carrying on business in Western Australia, and need not appoint an attorney under a registered power. — *Lamson's Store Service Co. v. Weidenbach & Co.'s Trustees*, 7 W. A. L. R. 166.

199. = S. A. a. (No. 557) § 197, except: “of *The Companies Act Amendment Act, 1886*, or of section 196” is omitted.

200. = S. A. a. (No. 557) § 198, except: “every power of attorney granted by a foreign company which shall have been so deposited in the office of the Registrar” is substituted for the beginning words of the S. A. Act, up to the words “section 196 of this Act” inclusive.

Proceedings on death or revocation of power of attorney. 201. [As amended by f. (2 Edw. 7, No. 19) § 3.] In the event of the death of any sole or sole surviving attorney whose power of attorney shall have been deposited in the office of the Registrar under this Part of this Act, or in the event of the filing under the last preceding section of a notice of revocation of the power of any such attorney, the company shall not from the expiration of six months after such death, or one month or such extended time as may be allowed under special circumstances by the Registrar, after the filing of such notice, carry on business in the said Colony, until the provisions of subsections 1., 2., 3., and 4. of section 198 shall have been complied with, or again complied with, as the case may be.

Notice of change of office. 202. [As amended by b. (60 Vic. No. 2) § 3.] 1. If after notice given under subsection 5. of section 198 of this Act of the situation of the office or place of business of the company the situation of the same shall be changed, the attorney of the company shall forthwith give notice of such change in three consecutive issues of the *Government Gazette* and of one daily newspaper published in Perth, and a copy of each issue of the *Government Gazette* and of each daily newspaper shall be deposited in the office of the Registrar, and a fee of five shillings shall be payable in respect of all copies so filed. 2. = S. A. a. (No. 557) § 200 (2). — N. S. W. c. (No. 22 of 1906) 12; V. f. (No. 1482) 73; T. f. (59 Vic. No. 17) 12, g. (62 Vic. No. 26) 16; S. A. a. (No. 557) 200; Q. l. (59 Vic. No. 2) 8; N. Z. 302 (2, 5).

203. = S. A. a. (No. 557) § 201. — E. § 274; T. f. (59 Vic. No. 17) 29, 30; S. A. a. (No. 557) 201. — In an action by a foreign company in the Local Court the company must prove that it is an incorporated company and that it has complied with the provisions of this Act. — *Hansen v. Millar's Karri & Jarrah Co.*, 7 W. A. L. R. 266.

204. = S. A. a. (No. 557) § 202.

205. = S. A. a. (No. 557) § 203, except: “under this Act as aforesaid” is substituted for “section 196, subsection V. of this Act, or under section 11, subsection 1 or 3 of *The Companies Act Amendment Act, 1886*”.

206. = S. A. a. (No. 557) § 204 (1), except: “section 198” is substituted for “section 196”, and “pursuance of the same section” for “pursuance of the same subsection”.

207. = S. A. a. (No. 557) § 204 (2).

208. = S. A. a. (No. 557) § 205, except: “Colony” is substituted for “Province”, and “one West Australian daily newspaper circulating in Perth” for “two South Australian daily newspapers circulating in Adelaide”.

209. = S. A. a. (No. 557) § 206, except: “198” is substituted for “196”.

210. = S. A. a. (No. 557) § 207.

211. = S. A. a. (No. 557) § 208, except: “Colony” is substituted for “Province”.

212. = S. A. a. (No. 557) § 209, except: “incorporated in Great Britain and Ireland and” is omitted.

Part IX. No-Liability Companies. Calls.

Calls and notice thereof. 213. The calls upon shares in every company shall be made payable on a day not less than fourteen days from the day on which the call shall be made. When a call has been made, notice of the day when it will be payable, and of the place of payment thereof, shall be published in the *Government*

Gazette, and in a daily newspaper published in Perth, or in case the registered office shall be in any place other than Perth, in one or more newspapers circulating in the locality wherein the registered office of the company shall be situated. — V. f. (No. 1482) 8; S. A. a. (No. 557) 211.— See note to S. A. a. (No. 557) § 211.

214—215. = S. A. a. (No. 557) § 212—213.

216. = S. A. a. (No. 557) § 214, except: in (1) “notice of which shall be” is omitted, and “Perth” is substituted for “Adelaide” in both places where it occurs.

217—221. = S. A. a. (No. 557) § 215—219.

Part X. The Liability of Directors and Promoters.

222. = S. A. a. (No. 557) § 221 (1, 2, 3, 5).

223—225. = S. A. a. (No. 557) § 222—224.

Part XI. Miscellaneous.

226. = S. A. a. (No. 557) § 226.

Assignment equivalent to bankruptcy. 227. For the purposes of this Act, and so far as practicable, any person who shall make a conveyance or assignment for the benefit of his creditors, shall be deemed to have become bankrupt, and the provisions of this Act with respect to bankruptcy and the trustee of a bankrupt, shall, so far as applicable, apply to such assignment and the trustee thereof. — N. S. W. a. (No. 40 of 1899) 263, 264; Q. h. (56 Vic. No. 24) 21.

228. = S. A. a. (No. 557) § 228, except: “or manager” is inserted after “any secretary”.

229. = S. A. a. (No. 557) § 229, except: “or manager” is inserted after “any such secretary”.

230. = S. A. a. (No. 557) § 230.

231. = S. A. a. (No. 557) § 231, except: “Crown Solicitor” is substituted for “Attorney-General”.

232—233. = S. A. a. (No. 557) § 232—233.

234. = S. A. a. (No. 557) § 234, except: “at the discretion of the court to be kept in penal servitude for life or for any term not less than five years, or to be imprisoned for any term not exceeding two years with or without hard labour” is substituted for “to like punishment as if he had been convicted of obtaining money under a false pretence”.

235—238. = S. A. a. (No. 557) § 235—238.

239. = S. A. a. (No. 557) § 239, except: “Colony” is substituted for “Province”.

Notices and legal proceedings.

240—242. = S. A. a. (No. 557) § 240—242.

243. = S. A. a. (No. 557) § 243, except: in (1) “the Court, or any Judge or magistrate having jurisdiction in such court” is substituted for “the said court, or any Judge or special magistrate having jurisdiction in interlocutory proceedings in such Court”, and “Judge or magistrate shall seem fit” is substituted for “or Judge shall seem fit”; in (2) “Colony” is substituted for “Province”; in (3) “special” is omitted; in (4) “special” is omitted.

244. = S. A. a. (No. 557) § 244, except: “Colony in petty sessions” is substituted for “Province”.

Proceedings before justices. 245. All the proceedings before justices shall be regulated by Ordinance No. 5 of 1850, the 14 Victoria, No. 5, and any other Act that may be law in that behalf.

246. = S. A. a. (No. 557) § 246, except: “Colony” is substituted for “Province”.

247. = S. A. a. (No. 557) § 247, except: “and the proceedings in such appeal shall be conducted and regulated in manner prescribed by Part IX of *The Police Act, 1892*” is substituted for everything in the S. A. Act beginning with “which appeal shall be to the Local Court of Adelaide, etc.”.

248—249. = S. A. a. (No. 557) § 249—250.

Schedules.
First Schedule.

No. of Act.	Title.
22 Vic. 6.	An Ordinance for the incorporation and regulation of joint stock companies and other associations, and for limiting the liability of certain of the same.
48 Vic. 19.	An Act to extend the provisions of <i>The Joint Stock Companies Ordinance, 1858</i> , to insurance companies.
51 Vic. 32.	An Act for the incorporation and winding up of mining companies.

Second Schedule (§ 16).

(This is identical with the Second Schedule of the South Australian principal Act, except: In the numbering of the sections the following changes: S. A. § 7 = W. A. § 6, last sentence, beginning with "a call"; S. A. § 7 A = W. A. § 7; S. A. § 46 = W. A. § 45 A; and beginning with § 47 of S. A. the numbering of the W. A. Act is always one less. Throughout "Colony" is substituted for "Province", and "bankruptcy" or "bankrupt" for "insolvency" or "insolvent". In § 31 "four months" is substituted for "six months"; in § 14 "legal personal representative" is substituted for "representative"; in § 24 and § 57 (= S. A. § 58) "1893" is substituted for "1892"; in § 39 "five additional members up to fifty, and one for every ten additional members after fifty" is substituted for "ten additional members". In § 83 (= S. A. § 84) the following words are added at the end: "arranged under the heads appearing in the form annexed to this Table, or as near thereto as circumstances admit". In § 99 (= S. A. § 100) "were dead" is substituted for "was dead". The W. A. Act adds the form annexed to N. S. W. Sched. II., Table A.)

Third Schedule.

(This is identical with the Third Schedule of the South Australian Act.)

Fourth Schedule.

(This is identical with the Fourth Schedule of the South Australian Act.)

Fifth Schedule.

(This is identical with the Fifth Schedule of the South Australian Act, except "1893" is substituted for "1892".)

Sixth Schedule.

(This is identical with the Sixth Schedule of the South Australian Act, except in Form B "Perth" is substituted for "Adelaide". Form C is not given.)

Seventh Schedule.

(This is identical with the Seventh Schedule of the South Australian Act, except: Throughout "Perth" is substituted for "Adelaide", and "*Companies Act, 1893*", for "*Companies Act, 1892*". In § 2 (a) "one daily Perth newspaper" is substituted for "two daily Adelaide newspapers". In § 19 "Western Australia" is substituted for "South Australia", and in § 30 "168" is substituted for "167". In § 31 the last sentence reads as follows: "All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner, and notice shall be given by the official liquidator to the several creditors who have filed affidavits of the allowance or disallowance of their respective claims". In § 32 "be verified by the affidavit of the official liquidator, and shall" is inserted after "no-liability company". In § 43 "has been given" is substituted for "have been given". In § 44 "attend the proceedings" is substituted for "attend any proceedings". In § 48 "Colony" is substituted for "Province". In Form No. 6 the beginning words are: "Upon hearing the application" instead of "Upon the application". In No. 12 "in a suit" is substituted for "in an administration action". In the Rules for Meetings of Creditors, in Rule 1 "two" is omitted before "daily newspapers", in Rule 11 "and shall be issued by the liquidator" is added at the end, in Rule 12 "is deposited" is substituted for "be deposited".)

**b) 60 Vic. No. 2. An Act to amend the Companies Act, 1893
(23d September, 1896).**

Short title. 1. This Act may be cited for all purposes as the *Companies Act, 1893, Amendment Act, 1896*, and shall be incorporated with and read as part of the *Companies Act, 1893*.

[2 amends a. (56 Vic. No. 8) § 198 (3), *supra*, and is there incorporated.]

[3 amends a. (56 Vic. No. 8) § 198 (5) and 202 (1), *supra*, and is there incorporated.]

Foreign company may obtain certificate of compliance with principal Act. 4. Any foreign company which has, before the passing of this Act, complied, or may hereafter comply, with sections one hundred and ninety-eight or two hundred, and two hundred and one or two hundred and two, as the case may require, may obtain from the Registrar (who shall give to such company) a certificate under his hand and seal, in the form in the Schedule hereto, that such company has complied with the provisions of the aforesaid sections; and such certificate shall be conclusive evidence that such sections have been complied with by the company, and shall, as against the company, be conclusive evidence, and, for all other purposes, be presumptive evidence that such company has been duly incorporated. A fee of one pound one shilling shall be payable on every such certificate. — N. S. W. c. (No. 22 of 1906) 11; V. f. (No. 1482) 72; T. f. (59 Vic. No. 17) 13, g. (62 Vic. No. 26) 10; S. A. a. (No. 557) 204; N. Z. 303.

Schedule.

The Companies Act, 1893, Amendment Act, 1896.

This is to certify that _____ has complied with sections _____ of this Act, and it appears that such company has been duly incorporated.

Given under my hand and seal this _____

day of _____

A.D. 18 _____

Registrar of Companies.

**c) 61 Vic. No. 35. An Act to amend the Companies Act, 1893
(23d December, 1897).**

Interpretation. 1. [As amended by d. (62 Vic. No. 28) § 1.] In this Act the following terms shall have the meanings hereinafter assigned to them, if not inconsistent with the context or subject matter: "Principal register" shall mean the register of members of any foreign company kept at the principal office of such company outside the Colony. "Local register" shall mean the register established by this Act. "Colonial seal" shall mean the common seal of the company in use in the Colony. "Colony" means the Colony of Western Australia. "Foreign company" shall mean any joint stock company, or corporation duly incorporated for trading or other business purposes according to the law in force in the country in which it is incorporated, other than a company incorporated in Western Australia. "Representative" means an executor or administrator, and includes the Curator of Intestate Estates in cases where the Court shall have authorised him to administer the estate of a deceased person. It also includes "devisee" and "heir-at-law" where a devisee or heir-at-law is liable as a contributory. "Principal Act" shall mean the *Companies Act, 1893*. "Court" shall mean the Supreme Court or a Judge thereof. "Attorney" shall include agent, director, manager, and secretary, whether appointed by power of attorney or otherwise, or any person for the time being discharging any of such offices in said Colony. — N. S. W. c. (No. 22 of 1906) 2; V. f. (No. 1482) 70 (1); S. A. a. (No. 557) 3; Q. 1. (59 Vic. No. 2) 2; N. Z. 297.

[2 is repealed by d. (62 Vic. No. 28) § 2. In its place are substituted the provisions of § 3 of that Act, as amended, *infra*.]

Notice of trust not to be entered in register. 3. No notice of any trust, expressed, implied, or constructive, need be entered on the register of members, or be receivable by the company.

Colonial register to be deemed part of company's register of members. 5. A colonial register shall, as regards the parties entered therein, be deemed to be a part of the company's register of members, and shall be *primâ facie* evidence of all particulars entered therein.

Certificate to be primâ facie evidence of title. 6. There shall be kept at the office of every foreign company having a local register, a colonial seal and a certificate under the colonial seal of the company, specifying any share or shares, or stock held by any member thereof [?]¹), shall be *primâ facie* evidence of the title of the member to the share or shares, or stock therein specified. — E. 7 Edw. 7, c. 50, § 35 (3).

Inspection of register. Penalty for refusal of inspection. 7. 1. The local register of members shall be kept at the registered office of the company in the Colony, and, except when closed as hereinafter mentioned, shall, during not less than two hours in each day upon which the registered office of the company shall be open for business, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling or such less sum as the company may prescribe for each inspection, and every such member or other person may demand a copy of such register, or any part thereof, or of any list or summary prepared under section thirty of the principal Act, on payment of sixpence for every one hundred words required to be copied. 2. If such inspection or copy be refused, or if the company shall neglect to comply with the lawful demand for such inspection of²) copy, the company shall incur, for each refusal or neglect, a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal or neglect continues, and every attorney of the company who knowingly and wilfully authorises or permits such refusal or neglect shall incur the like penalty. In addition to the above penalty a Judge may, by order, compel an immediate inspection of the local register, and make such further or other order as the nature of the case requires.

Register may be closed. 8. Any foreign company may, upon giving notice by advertisement in any newspaper published in Perth, or in the place nearest to the registered office of the company, close the local register of members for any time or times not exceeding in the whole thirty days in each year, provided that the register shall not be closed at any one period for more than seven consecutive days.

Validity of transfer of shares of deceased person. 9. Any transfer of the shares or other interest registered in a colonial register of a deceased member of a foreign company, made by his representative, shall, notwithstanding such representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Notice of rectification to be given to Registrar. 10. When an order has been made rectifying the local register in the case of a company hereby required to send in a list of its members to the Registrar of Companies under the principal Act, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Register to be evidence. 11. The local register of members shall be *primâ facie* evidence of all matters by this Act directed or authorised to be inserted therein.

Dividends, how payable. 12. The dividends in foreign companies accruing due from time to time, in respect of shares on any local register, shall be notified by the officer in charge of such local register, by letter or post card to the shareholders on such local register, and by advertisement in the newspaper published nearest to the place of such local register, and shall be payable at the registered office of the company in the Colony to the shareholders on such local register at a time not later than fourteen days from the date on which such dividends have been declared payable at the foreign office of the company.

Register of mortgages, bills of sale, etc., to be kept. Penalty for default. Register of mortgages, etc., to be open to inspection. 13. 1. Every foreign company shall keep at its registered office in the Colony, a register of all mortgages, bills of sale, and other charges specifically affecting property of the company in the Colony, and shall enter in such register, in respect of each mortgage, bill of sale, or charge, a short description of the property mortgaged or charged, the amount of charge created and the rate of interest payable, and the names of the mortgagees or persons entitled

¹) "Which" (?). — ²) *Sic*; obviously "or".

to such charge. 2. If any such property of a foreign company registered in the Colony shall be mortgaged or charged, or if any bill of sale shall be given without such entry as aforesaid being made, every attorney or other officer of such company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds. 3. The register of mortgages, bills of sale, and charges required by this section, shall be open to inspection by any person at all reasonable times, and if such inspection be refused, any officer of the company refusing the same and every attorney of the company authorising, or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues, and in addition to the above penalty a Judge may, by order, compel an immediate inspection of the register. — E. § 274; N. S. W. c. (No. 22 of 1906) 9. — The debentures of a foreign company carrying on business in Western Australia require registration under the *Bills of Sale Act, 1879*, as amended by the *Bills of Sale Amendment Act, 1892*. — In re King of the West G. M. Co., Ltd., 1 W. A. L. R. 70; Monger & Co. v. Clyde Gold Mines (unreported, see 1 W. A. L. R. 70); Transport Trading & Agency Co., v. Smith, 8 W. A. L. R. 33. — An English company carrying on business in Western Australia issued debentures in England, which were not registered in the Colony. One month after the issue of the debentures the company gave a bill of sale over its chattels by way of collateral security to the said debentures, which was duly registered. In January, 1898, two months after the bill of sale was given a petition for winding up was presented, on which a winding-up order was made on 10th February, and a liquidator appointed. On 3d February the agent and trustee of the debenture holders took possession of the books and assets of the company in the Colony. The debentures charged the undertakings of the company "and all its property whatsoever and wheresoever, both present and future, including uncalled capital for the time being". The bill of sale covered all property then or at any future time to be in the hands of the company. *Held*, that the debenture holders were entitled to the whole of the assets of the company, including the book debts of the company. — In re Mackenzie Grant & Co., 1 W. A. L. R. 116.

Short title and incorporation. 14. This Act shall be read and construed with the *Companies Act, 1893*, and shall be known as the *Companies Act Amendment Act, 1897*.

First Schedule.

The Companies Act Amendment Act, 1897.

Application of Shareholder in Foreign Company to be placed upon the Colonial Register.

I, _____, of _____, being the person mentioned in the annexed certificate, as the registered holder of _____ shares, numbered _____ to _____ inclusive, in the _____, incorporated in _____, do hereby apply to be placed on the Colonial Register as proprietor of the said shares.
Dated this _____ day of _____, 18 ____.
Witness: _____

Second Schedule.

The Companies Act Amendment Act, 1897.

Certificate of Deposit of Shares lodged for transfer to the Colonial Register.

This is to certify that _____, of _____, did, on the _____ day of _____, 18 ____, deposit with me at the Registered Office, in the Colony of Western Australia, a certificate of _____ shares, numbered _____ to _____ inclusive, in the _____, for the purpose of having the same transferred to the Local Register under the above Act.
As witness my hand, at _____, this _____ day of _____, 18 ____.

For the Company,
A.B.,
(Attorney.)

Note. This deposit-note must be returned to the office before a certificate of the shares under the above Act can be issued; but it is not to be considered as a guarantee that the shares will be so transferred, and attention is directed to Section 4 of the above Act.

d) 62 Vic. No. 28. An Act to amend the Companies Act, 1893, Amendment Act, 1897 (28th October, 1898).

[1 amends c. (61 Vic. No. 35) § 1, and is there incorporated.]

[2 repeals c. (61 Vic. No. 35) § 2.]

Local register to be kept by foreign companies. 3. [As amended by e. (63 Vic. No. 54) § 2.] Every foreign company or the attorney of every foreign company carrying on business in this Colony shall, in the case of companies carrying on business therein at the time of the passing of this Act, within two calendar months from such time, and, as to all other companies so carrying on business at any time after the passing of this Act, within two calendar months from the deposit in the office of the Registrar of the power of attorney, in accordance, with section one hundred and ninety-eight of the *Companies Act, 1893*, open, keep, and maintain, or cause to be opened, kept, and maintained, at the registered office of the said company in the Colony, a register of shareholders under this Act, to be called a Colonial Register, for the registration of shall shareholders in such company who may apply in writing to such attorney to be registered therein. Every such register shall be kept in the manner provided by Part. III. of the *Companies Act, 1893*, and transfers shall be effected on such register in the same manner and at the same charges as on the register kept at the head office of the company, and transfers lodged in the colonial office of the company shall be binding upon the company, and the Court shall be entitled to exercise the same jurisdiction of rectifying the same as is by section thirty-six of the said Act vested in such Court with respect to a register of a company incorporated in the Colony. Every such foreign company failing or refusing to comply with the provisions of this section shall incur a penalty not exceeding one hundred pounds for every day during which such refusal or non-compliance shall continue, to be recovered in a summary manner before any two justices of the peace, or by action or suit in the Supreme Court, and shall be a charge on the property of the company, and in addition thereto, if such default continues for the space of three calendar months, the company, and every person acting as trustee or agent for the company or otherwise on its behalf, shall thereafter be incapable, while so in default, of bringing or maintaining in Western Australia any action, set-off, counter-claim, or other legal proceeding whatsoever in the said Colony.

[§ 4 is repealed.]

Transfer of shares. 5. On the application of any shareholder on the Colonial Register, his shares shall be transferred to the register of the head office of the company.

[§ 6 is repealed.]

Exemption from stamp duty on reconstruction. 7. Whenever a new incorporated company is formed by reconstruction upon the basis of a sale by the liquidator of a preexisting company to the new company, it shall be lawful for the Colonial Treasurer, in his discretion, to exempt from *ad valorem* duty, wholly or partially, any instrument whereby the assets of the preexisting company are transferred to the new company.

Limitation of application of Act. 8. [As amended by e. (63 Vic. No. 54) § 9.] The first six sections of this Act shall only apply to companies engaged in or authorised to engage in the business of mining, or the acquiring, cutting, or selling of indigenous timber, or the buying or selling of land in Western Australia.

e) 63 Vic. No. 54. An Act to amend an Act passed in the sixty-second year of Her Majesty, and numbered twenty-eight, intituled An Act to amend the Companies Act, 1893, Amendment Act, 1897 (16th December, 1899).

Short title and incorporation. 1. This Act may be cited as the *Companies Act Amendment Act, 1899*, and shall be construed as one with the *Companies Act, 1893*, hereinafter called the principal Act, and the Acts amending the same.

[2 amends d. (62 Vic. No. 28) § 3, *supra* and is there incorporated.]

Power to reject transfer to vest in attorney or local board. 3. If, by the constitution of the foreign company, the company or its directors have power to reject a transfer of shares, such power shall, in respect of transfers tendered for registration in the Colony, be vested in the attorney for the company or the local board of directors.

Transfer of shares to colonial register. 4. 1. Any shareholder in a foreign company who desires to be registered in the colonial register may deliver an application in the form of the first Schedule hereto, together with a certificate of the shares in respect of which he desires to be registered, to the attorney of the company at its registered office in the Colony. 2. The attorney shall thereupon give to the shareholder a certificate of deposit in the form of the second Schedule hereto, and shall, with due diligence, forward the share certificate to the principal registered office of the company; and if it there appears that no encumbrances or unpaid calls are registered against or due upon the shares, the shares shall be transferred to the colonial register, and notice of such transfer shall be given to the shareholder. 3. Upon production of the said certificate of deposit, after notification of such transfer, the attorney shall issue to the shareholder a certificate indorsed with the words "Colonial Register", showing that he is the proprietor of the shares, and such certificate shall be of the same force and effect as the superseded certificate. 4. For any failure or refusal to comply with this section, the company shall incur the like penalties, and suffer the like disabilities as prescribed by section two hereof.

On reconstruction liquidator or company to reserve colonial members' share of consideration. Liquidator to send to Registrar of Supreme Court declaration of compliance with this section, otherwise no property in the Colony to pass. Examination of declaration before filing. 5. 1. Whenever a foreign company carrying on business in this Colony is reconstructed on the basis of a sale by the liquidator of the assets of the company or otherwise, the liquidator or the company shall reserve, for the benefit of the members of the company registered on the colonial register (hereinafter called the colonial members), a part of the consideration passing to the reconstructing company, proportioned to the interests of the colonial members, and shall forthwith cause notice of such reservation to be published in the *Government Gazette*, and to be delivered to each colonial member, or sent by post to his registered address; and at any time within two months after such publication every colonial member may, by writing under his hand delivered by post or otherwise to the liquidator or the company, or the attorney of the liquidator, or of the company in the Colony, claim the share proportioned to the interest of such shareholder in the part of the consideration so reserved, and shall be entitled to receive the same. 2. The liquidator or the company shall forward to the Registrar at the Supreme Court a statutory declaration made by the liquidator or by a director or officer of the company authorised by the company in that behalf, stating how this section has been complied with; and until such declaration has been filed no conveyance, transfer, or dealing with any property of the company shall be registered in the Department of Mines or of Crown Lands or in the Office of Land Titles or in the office for the registration of deeds; and no person holding any property, real or personal, as servant, agent, or trustee on behalf of the company shall convey, deal with, or dispose of the same, nor shall any property of the company in this Colony pass to the purchaser thereof. 3. Before filing any declaration purporting to comply with this Act, the Registrar shall examine the same and satisfy himself of such compliance.

On issue of new shares or debentures, colonial members' proportion to be reserved. 6. Whenever a foreign company carrying on business in the Colony has passed resolutions authorising the issue of debentures or additional shares, the company

shall reserve for the benefit of the colonial members a part of such issue proportioned to the interests of the colonial members, and shall forthwith cause notice of such reservation to be published and to be delivered in like manner as is hereinbefore provided in the case of reconstruction; and, at any time within two months of such publication, every colonial member may, by writing under his hand delivered by post or otherwise to the company, or to the attorney of the company in this Colony, claim his proportion of the new issue, and shall be entitled to receive or take up such proportion.

Notice of any right or option accruing to members to be given in Gazette, and their rights reserved. 7. Whenever any foreign company carrying on business in the Colony has passed any resolution, or entered into any arrangement whereby any right or option accrues to any members of the company, or its attorney in the Colony, the company shall forthwith cause notice of such right or option to be published and delivered in like manner as is hereinbefore provided in the case of reconstruction, and shall effectually reserve for the benefit of the colonial members the power to exercise such right or option till the end of two months from the date of such publication; and, at any time within such two months, every colonial member may, by writing under his hand, delivered by post or otherwise to the company, or to the attorney of the company in this Colony, claim to exercise the right or option so accruing, in proportion to his interest, and shall thereupon be entitled so to do. In case of non-observance of this or of the last preceding section, and if, within six months after such resolution is passed or arrangement entered into, a statutory declaration, as hereinafter required, has not been made and filed on behalf of the company with the Registrar of the Supreme Court, the company shall thereafter be incapable of bringing or maintaining, either directly or through any person acting as trustee or agent on its behalf in Western Australia, any action, set-off, counterclaim, or other legal proceeding whatsoever in the Colony, and shall so remain incapable until such statutory declaration is so made and filed. The statutory declaration hereby required shall be made by a director, or some officer, or the local attorney of the company, who shall thereby declare that he is such officer or attorney, and is authorised by the company to make the declaration for the purpose of filing as aforesaid, and shall state that every colonial member who, within two months after the publication by the company, as hereinbefore required, of notice of the issue of debentures or additional shares, or the right or option, has claimed to receive a proportion of such issue or to exercise the right or option as aforesaid has been satisfied in respect thereof to the extent of his proportion.

Foreign company to send copies of reports and balance-sheets to local office.

8. Every foreign company required to maintain a colonial register shall, immediately after any report or balance-sheet is submitted to any meeting of its shareholders held out of Western Australia, forward to its registered office in Western Australia a sufficient number of copies of such report or balance-sheet to admit of their distribution among the colonial shareholders; and it shall be the duty of the attorney for the company in the Colony to send by post or deliver one of such copies to every colonial shareholder of the company. — E. 7 Edw. 7, c. 50, § 35 (3).

Repeal. 9. Section four of the Act passed in the sixty-first year of Her Majesty, numbered thirty-five, and sections four and six of the Act passed in the sixty-second year of Her Majesty, numbered twenty-eight, are hereby repealed, and section eight of the last mentioned Act is hereby amended by inserting in line two, after "engaged in", the words "or authorised to engage in", and section twenty-nine, sub-section one, of the principal Act is amended by striking out the words "and distinguishing each share by its number".

First Schedule.

The Companies Act Amendment Act, 1899.

Application of Shareholder in Foreign Company to be placed upon the Colonial Register.

I, _____ of _____, being the person mentioned in the annexed certificate as the registered holder of _____ shares, numbered _____ to _____ inclusive, in the _____ incorporated in _____ do hereby apply to be placed in the colonial register as proprietor of the said shares.

Dated this _____ day of _____ 1 _____.

Witness: _____

*Second Schedule.***The Companies Act Amendment Act, 1899.***Certificate of Deposit of Shares lodged for Transfer to the Colonial Register.*

This is to certify that _____ of _____ did on the _____ day of _____, deposit with me at the registered office, in the Colony of Western Australia, a certificate of _____ shares, numbered _____ to _____ inclusive, in the _____ for the purpose of having the same transferred to the local register under the above Act.

As witness my hand at _____ this _____ day of _____
 For the Company,
 A.B.,
 Attorney.

Note. This deposit note must be returned to the office before a certificate of the shares under the above Act can be issued; but it is not to be considered as a guarantee that the shares will be so transferred.

**f) 2 Edw. 7, No. 19. An Act to amend the Companies Act, 1893
 (11th December, 1902).**

Short title. 1. This Act may be cited as the *Companies Act Amendment Act, 1902*, and shall be read as one with the *Companies Act, 1893*, hereinafter referred to as the principal Act.

Amendment of 56 Vic. No. 8, Sec. 198. 2. Section one hundred any ninety-eight of the principal Act is hereby amended by adding the following subsection: 6. Where any foreign company shall, by power of attorney (hereinafter referred to as the original power of attorney) under its common seal, or executed in such manner as to be binding on the company, empower some person, whether in the State of Western Australia or elsewhere, to act as its attorney with the powers referred to in subsection one, and such attorney shall, in exercise of a power thereby conferred, delegate such powers to any other person or appoint a substitute in the said State to exercise such powers, such company shall be deemed to have complied with the preceding subsections of this section. a) A declaration with respect to such original power of attorney shall be made by one of the directors or the general manager or secretary of the company, in accordance with the provisions of subsection two, and such declaration shall be indorsed on or annexed to such original power of attorney; b) The deed under which such powers as aforesaid are delegated, or substitutionary power of attorney, as the case may be (which deed and substitutionary power of attorney, as the case may be, are hereinafter included in the designation "the sub-power of attorney"), shall be executed in the presence of two witnesses, and there shall be attached thereto a statutory declaration, made before a notary, or other person authorised to take the same, by one of such attesting witnesses to the effect that such sub-power of attorney has been duly executed; c) The company shall deposit in the office of the Registrar of Companies the original power of attorney, or a duly authenticated office copy thereof, and also the sub-power of attorney with the respective declarations attached thereto, and, if the company shall be incorporated, evidence of its incorporation pursuant to section two hundred and ten of the principal Act; d) The attorney acting under the sub-power of attorney shall comply with subsection five. — E. § 274; N. S. W. c. (No. 22 of 1906) 7; V. f. (No. 1482) 70; T. f. (59 Vic. No. 17) 5; S. A. b. (No. 576) 9; Q. l. (59 Vic. No. 2) 5—7, N. Z. 298, 305.

[3 amends a. (56 Vic. No. 8) § 201, *supra*, and is there incorporated.]

43 Vic. c. 19.	8 Edw. 7 c. 69.	Sec. 28 29 30 31 (1, 2) 32 (1) 32 (3)	Sec. 234 235 236 122, 287 285 131 (8)	7 Edw. 7 c. 50.	8 Edw. 7 c. 69.	Sec. 1 (2) 1 (2), 4 1 (1, 5) 1 (3) 2 3 5 6 7 7, 20, 21 8 9 10 (6) 10, 52 (1) 10, 17 11 13 14 15 16 18 19 (4) 19, 50 20 21 22, 23 23 24 (1, 2, 3) 25, 45 26 27 28 29 30 31 31 (1, 3) 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 50 52 (1, 3)	Sec. 72, 88 87 82 85 81 80 92 88 90 26 89 91 99 93 101 94 212 103 104 105 102 112 118 26 26 65 114 64, 68 69 187 188 130, 187 141 209 223 195 279 84 78 274 106 2, 121 115, 129 120 45 108 95 20 34 109 70 234 233 232 276 195 30, 42, 53, 58 274, 281, 285, 296																
46 & 47 Vic. c. 30.	8 Edw. 7 c. 69.	Sec. 2 2, 3	Sec. 285 34-36	53 & 54 Vic. c. 64.	8 Edw. 7 c. 69.	Sec. 3, 4	Sec. 84	56 & 57 Vic. c. 58.	8 Edw. 7 c. 69.	Sec. 1	Sec. 215	60 & 61 Vic. c. 19.	8 Edw. 7 c. 69.	Sec. 2, 3	Sec. 209	63 & 64 Vic. c. 48.	8 Edw. 7 c. 69.	Sec. 1 1, 2 2 3 4 4 (1, 5) 5 5 6 7 8 9 10 11 12 12 (8) 13 14 15 16 17 18 (1, 3) 18 20 21, 22 24 24 25 26 28 29 30 31 32 (2) 34 34 (2) 34 (3)	Sec. 17 9 30 31 31 (1, 3) 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 50 52 (1, 3) 279, 285 245 235 17 93 276 (2)	8 Edw. 7 c. 12.	8 Edw. 7 c. 69.	Sec. 1	Sec. 276
49 Vic. c. 23.	8 Edw. 7 c. 69.	Sec. 6 3 4 5, 6 5	Sec. 213 208 135 181 136, 203	51 & 52 Vic. c. 62.	8 Edw. 7 c. 69.	Sec. 1	Sec. 209	53 & 54 Vic. c. 63.	8 Edw. 7 c. 69.	Sec. 1 2, 3 1 (1), 3 (3) 2, 9 (6, 7) 3 3-5 4 5 6 7 8 (1, 2) 8 (3, 9) 9 10 11 (1, 5) 11 (2, 4, 6) 12 13 14 15 16 17, 18 19 20 21 22 23, 24 25 26 27	Sec. 264 263 (e) 264 133 84 162 161 152 147 143 175 160 215 229 154 151, 214 173 187 244 230 231 232 155 156 157 158 159 237 233	Sec. 131, 263, 264 (3), 264 (4) 264 263 (e) 264 133 84 162 161 152 147 143 175 160 215 229 154 151, 214 173 187 244 230 231 232 155 156 157 158 159 237 233	Sec. 264 263 (e) 264 133 84 162 161 152 147 143 175 160 215 229 154 151, 214 173 187 244 230 231 232 155 156 157 158 159 237 233	Sec. 264 263 (e) 264 133 84 162 161 152 147 143 175 160 215 229 154 151, 214 173 187 244 230 231 232 155 156 157 158 159 237 233	Sec. 264 263 (e) 264 133 84 162 161 152 147 143 175 160 215 229 154 151, 214 173 187 244 230 231 232 155 156 157 158 159 237 233	Sec. 264 263 (e) 264 133 84 162 161 152 147 143 175 160 215 229 154 151, 214 173 187 244 230 231 232 155 156 157 158 159 237 233	Sec. 264 263 (e) 264 133 84 162 161 152 147 143 175 160 215 229 154 151, 214 173 187 244 230 231 232 155 156 157 158 159 237 233	Sec. 264 263 (e) 264 133 84 162 161 152 147 143 175 160 215 229 154 151, 214 173 187 244 230 231 232 155 156 157 158 159 237 233	Sec. 264 263 (e) 264 133 84 162 161 152 147 143 175 160 215 229 154 151, 214 173 187 244 230 231 232 155 156 157 158 159 237 233	Sec. 264 263 (e) 264 133 84 162 161 152 147 143 175 160 215 229 154 151, 214 173 187 244 230 231 232 155 156 157 158 159 237 233			

Sale of Goods Acts.¹⁾

1. Victoria. 59 Vic. No. 1422. An Act for codifying the law relating to the Sale of Goods (20th February, 1896).

Short title. 1. This Act may be cited as the *Sale of Goods Act, 1896*. — E. § 64; T. 1; S. A. 62; Q. 1; W. A. 62; N. Z. 1.

Commencement. 2. This Act shall come into operation on the first day of July, One thousand eight hundred and ninety-six. — E. § 63; T. 2; S. A. 61; Q. 2; W. A. 61; N. Z. 1.

Preliminary.

Interpretation of terms. 3. 1. In this Act, unless the context or subject-matter otherwise requires: "Action" includes counter-claim and set-off. "Buyer" means a person who buys or agrees to buy goods. "Contract of sale" includes an agreement to sell as well as a sale. "Delivery" means voluntary transfer of possession from one person to another. "Document of title" has the same meaning as it has in the *Instruments Act, 1890*. "Fault" means wrongful act or default. "Future goods" mean goods to be manufactured or acquired by the seller after the making of the contract for sale. "Goods" includes all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. "Plaintiff" includes defendant counterclaiming. "Property" means the general property in goods and not merely a special property. "Quality of goods" includes their state or condition. "Sale" includes a bargain and sale as well as a sale and delivery. "Seller" means a person who sells or agrees to sell goods. "Specific goods" means goods identified and agreed upon at the time a contract of sale is made; and "Warranty" means an agreement with reference to goods which are the subject of a contract of sale but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. 2. A thing is deemed to be done in "good faith" within the meaning of this Act when it is in fact done honestly, whether it be done negligently or not. 3. A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of insolvency or not. 4. Goods are in a "deliverable state" within the meaning of this Act when they are in such a state that the buyer would under the contract be bound to take delivery of them. — E. § 62; T. 3; S. A. 60; Q. 3; W. A. 60; N. Z. 2.

Repeals. 4. The enactments mentioned in the Schedule to this Act, are hereby repealed as from the commencement of this Act to the extent in that Schedule mentioned. Such repeal shall not affect anything done or suffered or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest. — E. § 60; T. 4; S. A. 58; Q. 60; W. A. 58; N. Z. 60.

Savings. 5. 1. The rules in insolvency relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act contained. 2. The rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause shall continue to apply to contracts for the sale of goods. 3. Nothing in this Act, or in any repeal effected thereby, shall affect the enactments relating to bills of sale, or any enactment relating to the sale of goods which is not expressly repealed by this Act. 4. The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by

¹⁾ The references in the notes are to the English Act (E.) 56 & 57 Vic. c. 71, and to the Acts of the Australian States and of New Zealand herein reprinted. There is no codification of this branch of the law in New South Wales.

way of mortgage, pledge, charge, or other security. — E. § 61; T. 5; S. A. 59; Q. 61; W. A. 59; N. Z. 61.

Part I. Formation of the Contract. Contract of sale.

Sale and agreement to sell. 6. 1. A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration called the price. There may be a contract of sale between one part owner and another. 2. A contract of sale may be absolute or conditional. 3. Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale; but where the transfer of the property in the goods is to take place at a future time, or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell. 4. An agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred. — E. § 1; T. 6; S. A. 1; Q. 4; W. A. 1; N. Z. 3. — Where under an agreement a certain sum was to be paid on the delivery of an article, and a further monthly payment of a certain sum during the continuance of the contract, with the further provision that when a certain sum was paid the article should become the absolute property of the person to whom the article was delivered, it was held that the agreement was a contract of sale, and not a contract of rent or hire. — *Sutton's Proprietary Ltd. v. Richards*, 29 V. L. R. 743; 25 A. L. T. 240; 10 A. L. R. 93. This case was distinguished from one where under the terms of the agreement the person to whom the article was delivered might determine the agreement at any time, after a time specified, by returning the goods. — *Wertheim v. Barnes*, 10 A. L. R. (C. N.) 69.

Capacity to buy and sell. 7. Capacity to buy and sell is regulated by the general law concerning capacity to contract and to transfer and acquire property. Provided that where necessaries are sold and delivered to an infant or minor or to a person who, by reason of mental incapacity or drunkenness, is incompetent to contract he must pay a reasonable price therefor. "Necessaries" in this section mean goods suitable to the condition in life of such infant or minor or other person and to his actual requirements at the time of the sale and delivery. — E. § 2; T. 7; S. A. 2; Q. 5; W. A. 2; N. Z. 4.

Formalities of the contract.

Contract of sale how made. 8. Subject to the provisions of this Act and of any statute in that behalf, a contract of sale may be made in writing (either with or without seal) or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties: Provided that nothing in this section shall affect the law relating to corporations. — E. § 3; T. 8; S. A. 3; Q. 6; W. A. 3; N. Z. 5.

Contract for sale of ten pounds and upwards. 9. 1. A contract for the sale of any goods of the value of ten pounds or upwards shall not be enforceable by action unless the buyer shall accept part of the goods so sold and actually receive the same or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract be made and signed by the party to be charged or his agent in that behalf. 2. The provisions of this section apply to every such contract, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract be actually made, procured, or provided or fit or ready for delivery, or some act may be requisite for the making or completing thereof or rendering the same fit for delivery. 3. There is an acceptance of goods within the meaning of this section when the buyer does any act in relation to the goods which recognises a pre-existing contract of sale, whether there be an acceptance in performance of the contract or not. — E. § 4; T. 9; S. A. 4; Q. 7; W. A. 4; N. Z. 6. — For a case where under the facts there was acceptance within § 9, see *Gazzard Bros. v. Ballarat Trustees, etc. Co.*, 8 A. L. R. 246. For cases decided under the law as it existed prior to the *Sale of Goods Act, 1896*, see *Adams v. Brown*, 2 W. & W. (L.) 176; *Wilkie v. Hunt*, 1 W. W. & a'B. (L.) 66; *Service v. Walker*, 3 V. L. R. (L.) 182; *M'Iver v. Duke Co.*, 5 V. L. R. (L.) 449; *Lange v. Grice*, 2 V. L. R. (L.) 251; s. c. *sub nom. Grice v. Richardson*, L. R. 3 App. Cas. 319; *Mitchell v. Watson*, 6 V. L. R. (L.) 493; s. c. *sub nom. Watson v. Mitchell*, 2 A. L. T. 99; *Moss v. Fowler*, 3 A. J. R. 122; *Williams v. Ross*, 2 W. & W. (L.) 285; *Pratt v. Rush*, 5 V. L. R. (L.) 421; *Hill v. Willis*, 6 V. L. R. (L.) 193, 2 A. L. T. 20. A signed and sent to B a letter offering goods over the value of £ 10. B accepted by letter. Held, contract was enforceable. — *Patterson v. Dolman*, (1908) V. L. R. 354.

Subject-matter of contract.

Existing or future goods. 10. 1. The goods which form the subject of a contract of sale may be either existing goods owned or possessed by the seller or goods to be manufactured or acquired by the seller after the making of the contract of sale, in this Act called "future goods". 2. There may be a contract for the sale of goods the acquisition of which by the seller depends upon a contingency which may or may not happen. 3. Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as an agreement to sell the goods. — E. § 5; T. 10; S. A. 5; Q. 8; W. A. 5; N. Z. 7.

Goods which have perished. 11. Where there is a contract for the sale of specific goods, and the goods, without the knowledge of the seller, have perished at the time when the contract is made, the contract is void. — E. § 6; T. 11; S. A. 6; Q. 9; W. A. 6; N. Z. 8.

Goods perishing before sale but after agreement to sell. 12. Where there is an agreement to sell specific goods, and subsequently the goods, without any fault on the part of the seller or buyer, perish before the risk passes to the buyer, the agreement is thereby avoided. — E. § 7; T. 12; S. A. 7; Q. 10; W. A. 7; N. Z. 9.

The price.

Ascertainment of price. 13. 1. The price in a contract of sale may be fixed by the contract or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties. 2. Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. — E. § 8; T. 13; S. A. 8; Q. 11; W. A. 8; N. Z. 10.

Agreement to sell at valuation. 14. 1. Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party, and such third party cannot or does not make such valuation, the agreement is avoided: Provided that if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor. 2. Where such third party is prevented from making the valuation by the fault of the seller or buyer, the party not in fault may maintain an action for damages against the party in fault. — E. § 9; T. 14; S. A. 9; Q. 12; W. A. 9; N. Z. 11.

Conditions and warranties.

Stipulations as to time. 15. 1. Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be of the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract. 2. In a contract of sale "month" means *prima facie* calendar month. — E. § 10; T. 15; S. A. 10; Q. 13; W. A. 10; N. Z. 12.

When condition to be treated as warranty. 16. 1. Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or may elect to treat the breach of such condition as a breach of warranty and not as a ground for treating the contract as repudiated. 2. Whether a stipulation in a contract of sale is a condition the breach of which may give rise to a right to treat the contract as repudiated, or a warranty the breach of which may give rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated, depends in each case on the construction of the contract. A stipulation may be a condition though called a warranty in the contract. 3. Where a contract of sale is not severable and the buyer has accepted the goods or part thereof, or where the contract is for specific goods the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there be a term of the contract express or implied to that effect. 4. Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise. — E. § 11; T. 16; S. A. 11; Q. 14; W. A. 11; N. Z. 13.

Implied undertaking as to title, etc. 17. In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is: a) An implied condition on the part of the seller that in the case of a sale he has a right to sell the goods, and that in the case of an agreement to sell he

will have a right to sell the goods at the time when the property is to pass; b) An implied warranty that the buyer shall have and enjoy quiet possession of the goods; c) An implied warranty that the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time when the contract is made. — E. § 12; T. 17; S. A. 12; Q. 15; W. A. 12; N. Z. 14. — *Cp. Stewart v. Weekes*, 15 A. L. T. 53. In one of the older cases it was said that a warranty that the vendor is the owner of the goods sold may be implied from the circumstances of the sale. — *Smith v. Starling*, 9 V. L. R. (L.) 178; 5 A. L. T. 65.

Sale by description. 18. Where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description; and if the sale be by sample as well as by description it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. — E. § 13; T. 18; S. A. 13; Q. 16; W. A. 13; N. Z. 15. — Goods not corresponding with description may be retained and the seller's breach of contract treated as a breach of warranty. — *Duckett v. Belgian Export Coy.*, 10 V. L. R. (L.) 36. See also *Spence v. Duffield*, 1 V. R. (L.) 49; 1 A. J. R. 74.

Implied conditions as to quality or fitness. 19. Subject to the provisions of this Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows: a) Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there is an implied condition that the goods shall be reasonably fit for such purpose: Provided that in the case of a contract for the sale of a specified article under its patent or other trade name there is no implied condition as to its fitness for any particular purpose. b) Where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality: Provided that if the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed. c) An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. d) An express warranty or condition does not negative a warranty or condition implied by this Act unless inconsistent therewith. — E. § 14; T. 19; S. A. 14; Q. 17; W. A. 14; N. Z. 16. — Where plaintiffs, who were cattle salesmen, sold bullocks in the open market to defendant, who was a butcher, and who purchased them for human consumption, and where before sale the bullocks were inspected and passed as in good condition by an inspector, but where one of the bullocks upon being killed was found to be in a diseased condition, it was held that there was no implied warranty as to the condition of the bullocks, and that the plaintiffs were entitled to recover the price of the diseased bullock. — *Powers, Rutherford & Co. v. Glendenning*, 23 V. L. R. 144. Where there was an express warranty that the goods were "of fair average quality of the seller's usual shipment from port of loading to this port", it was held that there was no implied warranty that the goods were merchantable. — *Moore v. Winther & Co.*, 3 A. L. R. (C. N.) 41. Similarly, a sale "with all faults" rebuts the presumption that the goods are merchantable. — *Service v. Walker*, 3 V. L. R. (L.) 348. In the case of a sale of future goods, or where inspection is otherwise impossible, there is ordinarily an implied warranty of merchantable quality. — *Thomas v. Marks*, 10 V. L. R. (L.) 217; 6 A. L. T. 91.

Sale by sample.

Sale by sample. 20. 1. A contract of sale is a contract for sale by sample where there is a term in the contract express or implied to that effect. 2. In the case of a contract for sale by sample: a) There is an implied condition that the bulk shall correspond with the sample in quality; b) There is an implied condition that the buyer shall have a reasonable opportunity of comparing the bulk with the sample; c) There is an implied condition that the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. — E. § 15; T. 20; S. A. 15; Q. 18; W. A. 15; N. Z. 17.

Part II. Effects of the Contract.

Transfer of property as between seller and buyer.

Goods must be ascertained. 21. Where there is a contract for the sale of unascertained goods no property in the goods is transferred to the buyer unless

and until the goods are ascertained. — E. § 16; T. 21; S. A. 16; Q. 19; W. A. 16; N. Z. 18.

Property passes when intended to pass. 22. 1. Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. 2. For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties, and the circumstances of the case. — E. § 17; T. 22; S. A. 17; Q. 20; W. A. 17; N. Z. 19.

Rules for ascertaining intention. 23. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer: Rule 1. Where there is an unconditional contract for the sale of specific goods in a deliverable state the property in the goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment or the time of delivery or both be postponed. Rule 2. Where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state the property does not pass until such thing be done and the buyer has notice thereof. Rule 3. Where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test, or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing be done and the buyer has notice thereof. Rule 4. When goods are delivered to the buyer on approval or on "sale or return" or other similar terms, the property therein passes to the buyer: a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction; b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time, has been fixed for the return of the goods on the expiration of such time and if no time has been fixed on the expiration of a reasonable time. What is a reasonable time is a question of fact. Rule 5. 1. Where there is a contract for the sale of unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation is made. 2. Where in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other bailee or custodian (whether named by the buyer or not) for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. — E. § 18; T. 23; S. A. 18; Q. 21; W. A. 18; N. Z. 20.

Reservation of right of disposal. 24. 1. Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may by the terms of the contract or appropriation reserve the right of the disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee or custodian for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled. 2. Where goods are shipped and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *primâ facie* deemed to reserve the right of disposal. 3. Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him. — E. § 19; T. 24; S. A. 19; Q. 22; W. A. 19; N. Z. 21.

Risk *primâ facie* passes with property. 25. Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not: Provided that where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault: Provided also that nothing in this section shall

affect the duties or liabilities of either seller or buyer as a bailee or custodier of the goods of the other party. — E. § 20; T. 25; S. A. 20; Q. 23; W. A. 20; N. Z. 22.

Transfer of title.

Sale by person not the owner. 26. 1. Subject to the provisions of this Act where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. 2. Provided also that nothing in this Act unless specially so expressed shall affect: a) The provisions of the *Instruments Act, 1890*, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof. b) The validity of any contract of sale under any special common law or statutory power of sale, or under the order of a court of competent jurisdiction. — E. § 21; T. 26; S. A. 21; Q. 24; W. A. 21; N. Z. 23. — See *Geddes v. McDonnell*, 22 V. L. R. 330; 18 A. L. T. 125; 2 A. L. R. 284.

Market overt. 27. 1. Where goods are sold in market overt according to the usage of the market the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller. 2. Nothing in this section shall affect the law relating to the sale of cattle. — E. § 22; T. 27; S. A. 22; W. A. 22; N. Z. 24. — A market duly established by a municipal council under the *Local Government Act, 1874*, § 451, is a market overt. — *Ward v. Stephen*, 12 V. L. R. 378; 8 A. L. T. 27.

Sale under voidable title. 28. When the seller of goods has a voidable title thereto but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title. — E. § 23; T. 28; S. A. 23; Q. 25; W. A. 23; N. Z. 25.

Revesting of property in stolen goods on conviction of offender. 29. 1. Where goods have been stolen and the offender is prosecuted to conviction the property in the goods so stolen revests in the person who was the owner of the goods or his personal representative, notwithstanding any intermediate dealing with them whether by sale in market overt or otherwise. 2. Notwithstanding any enactment to the contrary, where goods have been obtained by fraud or other wrongful means not amounting to larceny, the property in such goods shall not revert in the person who was the owner of the goods or his personal representative by reason only of the conviction of the offender. — E. § 24; T. 29; S. A. 24; Q. 26; W. A. 24; N. Z. 26.

Seller or buyer in possession after sale. 30. 1. Where a person having sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge, or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same. 2. Where a person having bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods or documents of title under any sale, pledge, or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner. 3. In this section the term "mercantile agent" means a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods. — E. § 25; T. 30; S. A. 25; Q. 27; W. A. 25; N. Z. 27.

Effect of writs of execution. 31. 1. A writ of *fieri facias* or warrant or other writ of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and for the better manifestation of such time it shall be the duty of the sheriff, without fee, upon the receipt of any such writ, to indorse upon

the back thereof the hour, day, month, and year when he received the same: Provided that no such writ and no writ of attachment against the goods of a debtor shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or warrant, or any other writ by virtue of which the goods of the execution debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff. 2. In this section the term "sheriff" includes any officer charged with the enforcement of a writ of execution. — E. § 26; T. 31; S. A. 26; Q. 28; W. A. 26; N. Z. 28.

Part III. Performance of the Contract.

Duties of seller and buyer. 32. It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale. — E. § 27; T. 32; S. A. 27; Q. 29; W. A. 27; N. Z. 29. —

Payment and delivery are concurrent conditions. 33. Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions (that is to say) the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods. — E. § 28; T. 33; S. A. 28; Q. 30; W. A. 28; N. Z. 30.

Rules as to delivery. 34. 1. Whether it is for the buyer to take possession of the goods, or for the seller to send them to the buyer, is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he have one, and if not, his residence: Provided that if the contract be for the sale of specific goods which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery. 2. Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time. 3. Where the goods at the time of sale are in the possession of a third person there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf: Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods. 4. Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact. 5. Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. — E. § 29; T. 34; S. A. 29; Q. 31; W. A. 29; N. Z. 31.

Delivery of wrong quantity. 35. 1. Where the seller delivers to the buyer a quantity of goods less than he contracted to sell the buyer may reject them, but if the buyer accepts the goods so delivered he must pay for them at the contract rate. 2. Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate. 3. Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole. 4. The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties. — E. § 30; T. 35; S. A. 30; Q. 32; W. A. 30; N. Z. 32.

Instalment deliveries. 36. 1. Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments. 2. Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for, and the seller makes defective deliveries in respect of one or more instalments, or the buyer neglects or refuses to take delivery of or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated. — E. § 31; T. 36; S. A. 31; Q. 33; W. A. 31; N. Z. 33.

Delivery to carrier. 37. 1. Where in pursuance of a contract of sale the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, is *primâ facie* deemed to be a delivery of the goods to the buyer. 2. Unless otherwise authorised by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself or may hold the seller responsible in damages. 3. Unless otherwise agreed, where goods are sent by the seller to the buyer by a route involving sea transit under circumstances in which it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their sea transit, and if the seller fails to do so the goods shall be deemed to be at his risk during such sea transit. — E. § 32; T. 37; S. A. 32; Q. 34; W. A. 32; N. Z. 34. — Where goods are shipped “f. o. b.” and properly marked, and the proper marks are set forth in the ship’s manifest and in the bill of lading, which latter is attached to a bill of exchange and sent to the seller’s banker at the place of destination, there is a proper delivery of the goods to the buyer, although the marks are through the negligence of the shipper improperly set forth in the invoice sent to the buyer. As the buyer knew that the goods were to be shipped on a certain steamer, and knew also that the bill of lading was available for inspection at the bank, it was his duty to ascertain the proper marks from the ship’s manifest or from the bill of lading. He was not justified in relying solely on the marks set forth in the invoice. — *Glassford Cook & Co. Proprietary Ltd. v. J. A. Moore & Co.*, 25 V. L. R. 430; 21 A. L. T. 211; 6 A. L. R. 54.

Risk where goods are delivered at distant place. 38. Where the seller of goods agrees to deliver them at his own risk at a place other than that where they are when sold, the buyer must nevertheless, unless otherwise agreed, take any risk of deterioration in the goods necessarily incident to the course of transit. — E. § 33; T. 38; S. A. 33; Q. 35; W. A. 33; N. Z. 35.

Buyer’s right of examining the goods. 39. 1. Where goods are delivered to the buyer which he has not previously examined he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract. 2. Unless otherwise agreed, when the seller tenders delivery of goods to the buyer he is bound on request to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract. — E. § 34; T. 39; S. A. 34; Q. 36; W. A. 34; N. Z. 36.

Acceptance. 40. The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when after the lapse of a reasonable time he retains the goods without intimating to the seller that he has rejected them. — E. § 35; T. 40; S. A. 35; Q. 37; W. A. 35; N. Z. 37. — For a case illustrating the rule that after the lapse of a reasonable time the purchaser is deemed to have accepted the goods, see *Baird v. The King*, 28 V. L. R. 291; 24 A. L. T. 57; 8 A. L. R. 181.

Buyer not bound to return rejected goods. 41. Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he intimates to the seller that he refuses to accept them. — E. § 36; T. 41; S. A. 36; Q. 38; W. A. 36; N. Z. 38.

Liability of buyer for neglecting or refusing delivery of goods. 42. When the seller is ready and willing to deliver the goods and requests the buyer to take delivery and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. Nothing in this section shall affect the rights of the seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract. — E. § 37; T. 42; S. A. 37; Q. 39; W. A. 37; N. Z. 39.

Part IV. Rights of unpaid Seller against the Goods.

Unpaid seller defined. 43. 1. The seller of goods is deemed to be an “unpaid seller” within the meaning of this Act: a) When the whole of the price has not been paid or tendered; b) When a bill of exchange or other negotiable instrument

has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise. 2. In this Part of this Act the term "seller" includes any person who is in the position of a seller, as for instance an agent of the seller to whom the bill of lading has been indorsed or a consignor or agent who has himself paid or is directly responsible for the price. — E. § 38; T. 43; S. A. 38; Q. 40; W. A. 38; N. Z. 40.

Unpaid seller's rights. 44. 1. Subject to the provisions of this Act and of any statute in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods as such has by implication of law: a) A lien on the goods or right to retain them for the price while he is in possession of them; b) In case of the insolvency of the buyer a right of stopping the goods *in transitu* after he has parted with the possession of them; c) A right of re-sale as limited by this Act. 2. Where the property in goods has not passed to the buyer the unpaid seller has in addition to his other remedies a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage *in transitu* where the property has passed to the buyer. — E. § 39; T. 44; S. A. 39; Q. 41; W. A. 39; N. Z. 41.

Unpaid seller's lien.

Seller's lien. 45. 1. Subject to the provisions of this Act, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely: a) Where the goods have been sold without any stipulation as to credit; b) Where the goods have been sold on credit but the term of credit has expired; c) Where the buyer becomes insolvent. 2. The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee or custodian for the buyer. — E. § 41; T. 45; S. A. 40; Q. 42; W. A. 40; N. Z. 42.

Part delivery. 46. Where an unpaid seller has made part delivery of the goods he may exercise his right of lien or retention on the remainder unless such part delivery has been made under such circumstances as to show an agreement to waive the lien or right of retention. — E. § 42; T. 46; S. A. 41; Q. 43; W. A. 41; N. Z. 43.

Termination of lien. 47. 1. The unpaid seller of goods loses his lien or right of retention thereon a) When he delivers the goods to a carrier or other bailee or custodian for the purpose of transmission to the buyer without reserving the right of disposal of the goods; b) When the buyer or his agent lawfully obtains possession of the goods; c) By waiver thereof. 2. The unpaid seller of goods having a lien or right of retention thereon does not lose his lien or right of retention by reason only that he has obtained judgment or decree for the price of the goods. — E. § 43; T. 47; S. A. 42; Q. 44; W. A. 42; N. Z. 44.

Stoppage in transitu.

Right of stoppage in transitu. 48. Subject to the provisions of this Act, when the buyer of goods becomes insolvent the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods as long as they are in course of transit, and may retain them until payment or tender of the price. — E. § 44; T. 48; S. A. 43; Q. 45; W. A. 43; N. Z. 45.

Duration of transit. 49. 1. Goods are deemed to be in course of transit from the time when they are delivered to a carrier by land or water or other bailee or custodian for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee or custodian. 2. If the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end. 3. If after the arrival of the goods at the appointed destination the carrier or other bailee or custodian acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee or custodian for the buyer or his agent, the transit is at an end, and it is immaterial that a further destination for the goods may have been indicated by the buyer. 4. If the goods are rejected by the buyer, and the carrier or other bailee or custodian continues in possession of them, the transit is not deemed to be at an end, even if the seller has refused to receive them back. 5. When goods are delivered to a

ship chartered by the buyer, it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent to the buyer. 6. Where the carrier or other bailee or custodier wrongfully refuses to deliver the goods to the buyer or his agent in that behalf, the transit is deemed to be at an end. 7. Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been made under such circumstances as to show an agreement to give up possession of the whole of the goods. — E. § 45; T. 49; S. A. 44; Q. 46; W. A. 44; N. Z. 46.

How stoppage in transitu is effected. 50. 1. The unpaid seller may exercise his right of stoppage *in transitu* either by taking actual possession of the goods or by giving notice of his claim to carrier or other bailee or custodier in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice to be effectual must be given at such time and under such circumstances that the principal by the exercise of reasonable diligence may communicate it to his servant or agent in time to prevent a delivery to the buyer. 2. When notice of stoppage *in transitu* is given by the seller to the carrier or other bailee or custodier in possession of the goods, he must re-deliver the goods to or according to the directions of the seller. The expenses of such re-delivery must be borne by the seller. — E. § 46; T. 50; S. A. 45; Q. 47; W. A. 45; N. Z. 47.

Re-sale by buyer or seller.

Effect of sub-sale or pledge by buyer. 51. Subject to the provisions of this Act, the unpaid seller's right of lien or retention or stoppage *in transitu* is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto: Provided that where a document of title to goods has been lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, then if such last-mentioned transfer was by way of sale the unpaid seller's right of lien or retention or stoppage *in transitu* is defeated, and if such last-mentioned transfer was by way of pledge or other disposition for value the unpaid seller's right of lien or retention or stoppage *in transitu* can only be exercised subject to the rights of the transferee. — E. § 47; T. 51; S. A. 46; Q. 48; W. A. 46; N. Z. 48.

Sale not generally rescinded by lien or stoppage in transitu. 52. 1. Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of lien or retention or stoppage *in transitu*. 2. Where an unpaid seller who has exercised his right of lien or retention or stoppage *in transitu* re-sells the goods, the buyer acquires a good title thereto as against the original buyer. 3. Where the goods are of a perishable nature or where the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract. 4. Where the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim the seller may have for damages. — E. § 48; T. 52; S. A. 47; Q. 49; W. A. 47; N. Z. 49.

Part V. Actions for Breach of the Contract. Remedies of the seller.

Action for price. 53. 1. Where under a contract of sale the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may maintain an action against him for the price of the goods. 2. Where under a contract of sale the price is payable on a day certain irrespective of delivery, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price although the property in the goods has not passed, and the goods have not been appropriated to the contract. — E. § 49; T. 53; S. A. 48; Q. 50; W. A. 48; N. Z. 50.

Damages for non-acceptance. 54. 1. Where the buyer wrongfully neglects or refuses to accept and pay for the goods the seller may maintain an action

against him for damages for non-acceptance. 2. The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the buyer's breach of contract. 3. Where there is an available market for the goods in question the measure of damages is *primâ facie* to be ascertained by the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or if no time was fixed for acceptance then at the time of the refusal to accept. — E. § 50; T. 54; S. A. 49; Q. 51; W. A. 49; N. Z. 51.

Remedies of the buyer.

Damages for non-delivery. 55. 1. Where the seller wrongfully neglects or refuses to deliver the goods to the buyer the buyer may maintain an action against the seller for damages for non-delivery. 2. The measure of damages is the estimated loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract. 3. Where there is an available market for the goods in question the measure of damages is *primâ facie* to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or if no time was fixed, then at the time of the refusal to deliver. — E. § 51; T. 55; S. A. 50; Q. 52; W. A. 50; N. Z. 52.

Specific performance. 56. In any action for breach of contract to deliver specific or ascertained goods, the court may if it thinks fit, on the application of the plaintiff, by its judgment or decree direct that the contract shall be performed specifically without giving the defendant the option of retaining the goods on payment of damages. The judgment or decree may be unconditional or upon such terms and conditions as to damages, payment of the price, and otherwise as to the Court may seem just; and the application by the plaintiff may be made at any time before judgment or decree. — E. § 52; T. 56; S. A. 51; Q. 53; W. A. 51; N. Z. 53.

Remedy for breach of warranty. 57. 1. Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may: a) Set up against the seller the breach of warranty in diminution or extinction of the price; or b) Maintain an action against the seller for damages for the breach of warranty. 2. The measure of damages for breach of warranty is the estimated loss directly and naturally resulting in the ordinary course of events from the breach of warranty. 3. In the case of breach of warranty of quality such loss is *primâ facie* the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. 4. The fact that the buyer has set up the breach of warranty in diminution or extinction of the price does not prevent him from maintaining an action for the same breach of warranty if he has suffered further damage. — E. § 53; T. 57; S. A. 52; Q. 54; W. A. 52; N. Z. 54. — Cp. *Field v. Pincott* 3 A. L. R. (C. N.) 41. For a case setting forth the doctrine of subsection (1) see, *Thomas v. Marks*, 10 V. L. R. (L.) 217; 6 A. L. T. 91. In the case of the delivery of goods of an inferior quality the measure of damages is the difference in between the value of that which was delivered and that which ought to have been delivered. — *Thompson v. Marshall*, 3 W. W. & a'B. (L.) 150; *Spence v. Duffield*, 1 V. R. (L.) 49, 1 A. J. R. 74.

Interest and special damages. 58. Nothing in this Act shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. — E. § 54; T. 58; S. A. 53; Q. 55; W. A. 53; N. Z. 55.

Part VI. Supplementary.

Exclusion of implied terms and conditions. 59. Where any right, duty, or liability would arise under a contract of sale by implication of law it may be negatived or varied by express agreement or by the course of dealing between the parties, or by usage if the usage be such as to bind both parties to the contract. — E. § 55; T. 59; S. A. 54; Q. 56; W. A. 54; N. Z. 56.

Reasonable time a question of fact. 60. Where by this Act any reference is made to a reasonable time the question what is a reasonable time is a question of fact. — E. § 56; T. 60; S. A. 55; Q. 57; W. A. 55; N. Z. 57.

Rights, etc. enforceable by action. 61. Where any right, duty, or liability is declared by this Act it may, unless otherwise by this Act provided, be enforced by action. — E. § 57; T. 61; S. A. 56; Q. 58; W. A. 56; N. Z. 58.

Auction sales. 62. In the case of a sale by auction: 1. Where goods are put up for sale by auction in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale. 2. A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. Until such announcement is made any bidder may retract his bid. 3. Where a sale by auction is not notified to be subject to a right to bid on behalf of the seller it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person. Any sale contravening this rule may be treated as fraudulent by the buyer. 4. A sale by auction may be notified to be subject to a reserved or upset price, and a right to bid may also be reserved expressly by or on behalf of the seller. 5. Where a right to bid is expressly reserved, but not otherwise, the seller or any one person on his behalf may bid at the auction. — E. § 58; T. 62; S. A. 57; Q. 59; W. A. 57; N. Z. 59.

Schedule.

Number of Act.	Short Title.	Extent of Repeal.
No. 1103.	Instruments Act, 1890.	Sections 210 and 211.
No. 1142.	Supreme Court Act, 1890.	Sections 174, 175, 176, and 188.

2. Tasmania. 60 Vic. No. 14. An Act for codifying the law relating to the Sale of Goods (2d October, 1896).

1. = V. § 1.

2. = V. § 2, except: "January" is substituted for "July", and "ninety-seven" is substituted for "ninety-six".

Preliminary.

3. = V. § 3, except: in (1) "*The Factors Act, 1891*" is substituted for "*the Instruments Act, 1890*"; in (3) "bankrupt" is substituted for "insolvent", and "bankruptcy" is substituted for "insolvency".

Repeals. 4. The enactments mentioned in the Schedule to this Act, to the extent in that Schedule mentioned, shall not, after the commencement of this Act, extend to or be in force in this Colony; but this provision shall not affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest. — E. § 60; V. 4; S. A. 58; Q. 60; W. A. 58; N. Z. 60.

5. = V. § 5, except: in (1) "bankruptcy" is substituted for "insolvency".

Part I. Formation of the Contract. Contract of sale.

6—7. = V. § 6—7.

Formalities of the contract.

8. = V. § 8.

9. = V. § 9, except: in (2) "or be fit or ready for delivery" is substituted for "or fit or ready for delivery".

Subject-matter of the contract.

10—12. = V. § 10—12.

The price.

13—14. = V. § 13—14.

Conditions and warranties.

15—19. = V. § 15—19.

Sale by sample.

20. = V. § 20.

Part II. Effects of the Contract.

Transfer of property as between seller and buyer.

21—25. = V. § 21—25.

Transfer of title.

26. = V. § 26, except: in (2) (a) "*The Factors Act, 1891*", is substituted for "*the Instruments Act, 1890*".

27. = V. § 27.

28. = V. § 28, except: "that" is inserted after "provided".

29—31. = V. § 29—31.

Part III. Performance of the Contract.

32—37. = V. § 32—37.

38. = V. § 38, except: the beginning word is "when" instead of "where".

39—42. = V. § 39—42.

Part IV. Rights of unpaid Seller against the Goods.

43—44. = V. § 43—44.

Unpaid seller's lien.

45—47. = V. § 45—47.

Stoppage in transitu.

48—50. = V. § 48—50.

Re-sale by buyer or seller.

51—52. = V. § 51—52.

Part V. Actions for Breach of the Contract. Remedies of the seller.

53—54. = V. § 53—54.

Remedies of the buyer.

55—58. = V. § 55—58.

Part VI. Supplementary.

59—62. = V. § 59—62.

Schedule.

Session and Chapter.	Title of Act and Extent of Repeal.
29 Chas. II. c. 3.	An Act for the prevention of frauds and perjuries. In part, that is to say, sections 16 and 17.
9 Geo. IV. c. 14.	An Act for rendering a written memorandum necessary to the validity of certain promises and engagements. In part, that is to say, section 7.

3. South Australia. 58 & 59 Vic. No. 630. An Act for codifying the law relating to the Sale of Goods (20th December, 1895).

Part I. Formation of the Contract. Contract of sale.

1—2. = V. § 6—7.

Formalities of the contract.

3. = V. § 8.

4. = V. § 9. — E. § 4; V. 9; T. 9; Q. 7; W. A. 4; N. Z. 6. — A verbal agreement for the sale of a buggy for £ 35 was entered into between the plaintiff and defendant. The vendor retained actual possession, but allowed the purchaser to use the chattel until he could pay the price. The vendor did not use the chattel. *Held*, no constructive delivery under the Statute of Frauds. — *McInhereney v. Brady*, 16 S. A. L. R. 37.

Subject-matter of the contract.

5—7. = V. § 10—12.

Price.

8—9. = V. § 13—14.

Conditions and warranties.

10. = V. § 15.

11. = V. § 16, except: in (4) "condition of warranty" is substituted for "condition or warranty". This is obviously a typographical error.

12—13. = V. § 17—18.

14. = V. § 19, except: "expressely" is thus misspelled. — E. § 14; V. 19; T. 19; Q. 17; W. A. 14; N. Z. 16. — The buyer may by his delay or conduct lose the right to reject goods. — *Robin v. North Adelaide Cooperative Society, Ltd.*, 12 S. A. L. R. 136. Where the buyer has opportunity to inspect the chattel the doctrine of *caveat emptor* applies. — *McFarlane v. Hall*, 16 S. A. L. R. 126. The expression "by description" in subsection (b) is not confined to sales of unascertained goods, but may apply to sales of specific goods. — *Kidman v. Fiskien*, (1907) L. R. (S. A.) 110.

Sale by sample.

15. = V. § 20.

Part II. Effects of the Contract.

Transfer of property as between seller and buyer.

16—20. = V. § 21—25.

Transfer of title.

21. = V. § 26, except: subsection (2) reads as follows: 2. Provided also that nothing in this Act shall affect a) The provisions of *The Mercantile Law Amendment Act, 1861*, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof; b) The validity of any contract of sale under any special common law or statutory power of sale, or under the order of a court of competent jurisdiction.

22. = V. § 27 (1).

23—24. = V. § 28—29.

25. = V. § 30, except: in (3) "shall mean" is substituted for "means".

Effect of writs of execution. 26. 1. A writ or warrant of execution against goods shall bind the property in the goods of the execution debtor as from the time when the writ or warrant is delivered to the sheriff to be executed; and, for the better manifestation of such time, it shall be the duty of the sheriff, without fee, upon the receipt of any such writ, to indorse upon the back thereof the hour, day, month, and year when he received the same: Provided that no such writ or warrant shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ, or warrant, or any other writ by virtue of which the goods of the execution debtor might be seized or attached, had been delivered to and remained unexecuted in the hands of the sheriff. 2. In this section the term "sheriff" includes any officer charged with the enforcement of a writ or warrant of execution. — E. § 26; V. 31; T. 31; Q. 28; W. A. 26; N. Z. 28.

Part III. Performance of the Contract.

27. = V. § 32.

28. = V. § 33. — E. § 28; V. 33; T. 33; Q. 30; W. A. 28; N. Z. 30. — For an application of the general principle see *Mackie v. Hill*, 6 S. A. L. R. 22.

29. = V. § 34.

30. = V. § 35, except: "or quality" is inserted after "different description".

31. = V. § 36, except: in (1) "except in accordance with the usage of the trade" is inserted after "instalments".

32—36. = V. § 37—41.

37. = V. § 42, except: "provided that" is inserted after "custody of the goods".

Part IV. Rights of unpaid Seller against the Goods.

38—39. = V. § 43—44.

Unpaid seller's lien.

40—42. = V. § 45—47.

Stoppage in transitu.

43—45. = V. § 48—50.

Re-sale by buyer or seller.

46—47. = V. § 51—52.

Part V. Actions for Breach of the Contract. Remedies of the seller.

48—49. = V. § 53—54.

Remedies of the buyer.

50—53. = V. § 55—58.

Part VI. Supplementary.

54—57. = V. § 59—62.

Repeals. 58. The enactments mentioned in the Schedule to this Act shall have no force or effect within the Province of South Australia as from the commencement of this Act, to the extent in that Schedule mentioned: Provided that nothing herein contained shall affect anything done or suffered, or any right, title, or interest acquired or accrued before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or interest. — E. § 60; V. 4; T. 4; Q. 60; W. A. 58; N. Z. 60.

59. = V. § 5.

60. = V. § 3, except: in (1) the definition of “document of title” is as follows: “Document of title to goods” has the same meaning as it has in “*The Mercantile Law Amendment Act, 1861*”; “and” is omitted before “warranty;” in (3) “and whether he has become an insolvent or not” is added at the end of the subsection.

61. = V. § 2, except: “January” is substituted for “July”.

62. = V. § 1, except: “1895” is substituted for “1896”.

Schedule.

This Schedule is to be read as referring to the revised edition of the Statutes prepared under the direction of the Statute Law Committee.

Enactments Referred To.

Session and Chapter.	Title of Act.
1 Jac. 1, c. 21.	An Act against Brokers. The whole Act.
29 Chas. 2, c. 3.	An Act for the prevention of Frauds and Perjuries. In part, that is to say, sections 15 and 16 ¹).
9 Geo. 4, c. 14.	An Act for rendering a Written Memorandum necessary to the validity of certain Promises and Engagements. In part, that is to say, section 7.

4. Queensland. 60 Vic. No. 6. An Act for codifying the law relating to the Sale of Goods (7th September, 1896).

Part I. Preliminary.

1. = V. § 1, except: “of” is inserted before “1896”.

2. = V. § 2, except: “January” is substituted for “July”, and “ninety-seven” for “ninety-six”.

Interpretation of terms. 3. In this Act, unless the context or subject matter otherwise requires: “Action” includes counterclaim and set-off. “Buyer” means a person who buys or agrees to buy goods. “Contract of sale” includes an agreement to sell as well as a sale. “Delivery” means voluntary transfer of possession from one person to another. “Document of title to goods” has the same meaning as it has in the *Factors Act*. “Factors Act” means *The Factors Act, 1892*, and any enactment amending or substituted for the same. “Fault” means wrongful act or default. The term “Future goods” means goods to be manufactured or acquired by the seller after the making of the contract of sale. The term “Goods” includes all chattels personal other than things in action and money: The term also includes emblements and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. “Plaintiff” includes a defendant counterclaiming. “Property” means the general property in goods and not merely a special property. “Quality of goods” includes their state or condition. “Sale” includes a bargain and sale as well as a sale and delivery. “Seller” means a person who sells or agrees to sell goods. The term “specific goods” means goods identified and agreed upon at the time a contract of sale is made. “Warranty” means an agreement with reference to goods which are the subject of a contract of sale but collateral to the main pur-

¹) Commonly cited as sections 16 and 17.

pose of such contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. (2—4) = V. § 3 (2—4). — E. § 62; V. 3; T. 3; S. A. 60; W. A. 60; N. Z. 2.

Part II. Formation of the Contract. Contract of sale.

4. = V. § 6, except: in (4) "has elapsed" is substituted for "elapses". — E. § 1; V. 6; T. 6; S. A. 1; W. A. 1; N. Z. 3. — A contract of sale is presumed to be made at the place where the offer is accepted. Hence, an order for goods given in Western Australia, and accepted in Queensland, the goods being shipped at buyer's risk, is a Queensland contract. — *Mayers & Co. v. Johnson & Co.*, (1905) Q. W. N. 39.

Capacity to buy and sell. **5.** Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property: Provided that when necessities are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract he must pay a reasonable price therefor. The term "necessaries" in this section means goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of the sale and delivery. — E. § 2; V. 7; T. 7; S. A. 2; W. A. 2; N. Z. 4.

Formalities of the contract.

Contract of sale, how made. **6.** Subject to the provisions of this Act and of any statute in that behalf, a contract of sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties. This section does not affect the law relating to corporations. — E. § 3; V. 8; T. 8; S. A. 3; W. A. 3; N. Z. 5.

7. = V. § 9, except: in (1) "is not enforceable" is substituted for "shall not be enforceable", and "contract is made" for "contract be made"; in (2) "or that some act" is substituted for "or some act"; in (3) "there is an acceptance" is substituted for "there be an acceptance".

Subject-matter of contract.

Existing or future goods. **8.** 1. The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or future goods. 2—3. = V. § 10 (2—3), except: in (3) "when" is substituted for "where". E. § 5; V. 10; T. 10; S. A. 5; W. A. 5; N. Z. 7.

9. = V. § 11, except: "when" is substituted for "where".

10. = V. § 12, except: "when" is substituted for "where"; "thereby" is omitted.

The price.

11. = V. § 13, except in (2) "when" is substituted for "where".

12. = V. § 14, except in both subsections "when" is substituted for "where".

Conditions and warranties.

13. = V. § 15.

14. 1. = V. § 16 (1), except: "when" is substituted for "where". 2. = V. § 16 (2). 3. = V. § 16 (3), except: "when" is substituted for "where" in both places where it occurs; "there is a term" is substituted for "there be a term". 4. This section does not affect the case of any condition or warranty, the fulfilment of which is excused by law by reason of impossibility or otherwise.

15. = V. § 17.

16. = V. § 18, except: "when" is substituted for "where", and "sale is by sample" for "sale be by sample".

Implied conditions as to quality or fitness. **17.** Subject to the provisions of this Act and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, except as follows: 1. = V. § 19 (1), except: "when" is substituted for "where", and "he is the manufacturer" for "he be the manufacturer". 2. = V. § 19 (2), except: "when" is substituted for "where", "he is the manufacturer" for "he be the manufacturer", and "there is no implied condition" for "there be no implied condition". 3. = V. § 19 (3), except: "if the usage is such as to bind both parties to the contract" is added after "usage of trade". 4. = V. § 19 (4). — E. § 14; V. 19; T. 19; S. A. 14; W. A. 14; N. Z. 16.

Sale by sample.

18. = V. § 20, except: in (1) "when" is substituted for "where". — E. § 16; V. 20; T. 20; S. A. 15; W. A. 15; N. Z. 17. — For a case where under the facts the contract was severable, and the buyer was permitted to take such of the goods as corresponded with the sample, and reject the rest, see *Romberg v. Gilbert*, 11 Q. L. J. 96.

Part III. Effects of the Contract.

Transfer of property as between seller and buyer.

19. = V. § 21, except: "when" is substituted for "where".

20. = V. § 22, except: in (1) "when" is substituted for "where"; in (2) "regard is to be had" is substituted for "regard shall be had". — E. § 17; V. 22; T. 22; S. A. 17; W. A. 17; N. Z. 19. — Cp. *In re Gill*, ex parte Jones, 9 Q. L. J. 1.

Rules for ascertaining intention. 21. Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer: Rule 1. = V. § 23 (Rule 1), except: "when" is substituted for "where", and "is or are postponed" for "be postponed". Rule 2. = V. § 23 (Rule 2), except: "when" is substituted for "where", and "is done" for "be done". Rule 3. = V. § 23 (Rule 3), except: "when" is substituted for "where", and "is done" for "be done". Rule 4. = V. § 23 (Rule 4). Rule 5. = V. § 23 (Rule 5) except: in (1) "when" is substituted for "where"; and in (2) "when" is substituted for "where", and "or custodier" is omitted. — E. § 18; V. 23; T. 23; S. A. 18; W. A. 18; N. Z. 20.

Reservation of right of disposal. 22. 1. When there is a contract for the sale of specific goods or when goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled. 2. = V. § 24 (2), except: "when" is substituted for "where". 3. = V. § 24 (3), except: "when" is substituted for "where". — E. § 19; V. 24; T. 24; S. A. 19; W. A. 19; N. Z. 21. 23. = V. § 25, except: "when delivery" is substituted for "where delivery"; after "but for such fault" are inserted the following words, in lieu of the sentence beginning with "provided also": "This section does not affect the duties or liabilities of either seller or buyer as a bailee of the goods of the other party".

Transfer of title.

24. = V. § 26, except: in (1) "when" is substituted for "where"; in (2) "*Factors Act*" is substituted for "*Instruments Act, 1890*".

25. = V. § 28, except: "if" is substituted for "provided".

26. = V. § 29, except: in (1) "when" is substituted for "where", and "whether by sale in market overt or otherwise" is omitted; in (2) "when" is substituted for "where", and "does not revert" for "shall not revert". — E. § 24; V. 29; T. 29; S. A. 24; W. A. 24; N. Z. 25. — It is to be noted that the provision in regard to market overt is omitted in the Queensland Act.

27. 1. = V. § 30 (1), except: "when" is substituted for "where", and "has the same effect" for "shall have the same effect". 2. = V. § 30 (2), except: "when" is substituted for "where", and "has the same effect" for "shall have the same effect". 3. In this section the term "mercantile agent" has the same meaning as in the *Factors Act*.

Effects of writs of execution. 28. 1. A writ of *fieri facias* or other writ of execution against goods binds the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, it is the duty of the sheriff upon the receipt of any such writ to endorse upon the back thereof the hour, day, month, and year when he received it. But the delivery of such a writ to the sheriff does not prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ by virtue of which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff. 2. In this section the term "sheriff" includes any officer charged with the enforcement of a writ of execution. — E. § 26; V. 31; T. 31; S. A. 26; W. A. 26; N. Z. 28.

Part IV. Performance of the Contract.

29. = V. § 32.

30. = V. § 33. — E. § 28; V. 33; T. 33; S. A. 28; W. A. 28; N. Z. 30. — For a case illustrating the point that payment of the price and delivery of the goods are concurrent conditions, see *Howes Bros. v. Queensland Milling Co.*, 8 Q. L. J. 83.

31. 1. = V. § 34 (1), except: "if he has one" is substituted for "if he have one", and "contract is for" for "contract be for". 2. = V. § 34 (2), except: "when" is substituted for "where". 3. When the goods at the time of sale are in the possession of a third person, there is no delivery by the seller to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf. 4—5. = V. § 34 (4—5). 6. This section does not affect the operation of the issue or transfer of any document of title to goods. — E. § 29; V. 34; T. 34; S. A. 34; W. A. 34; N. Z. 31. — In a contract for sale of sheep to be delivered at a distance, purchaser to have the right to reject those lame, diseased, or unfit for travel, *semble*, the rejection is to be at the place where the contract was made and not at the place of delivery. — *Francis v. Lyon*, 1906 S. R. (Q.) 306. But see s. c. 4 C. L. R. 1023.

32. 1. = V. § 35 (1), except: "when" is substituted for "where". 2. = V. § 35 (2), except: "when" is substituted for "where". 3. = V. § 35 (3), except: "when" is substituted for "where", and "goods which he contracted" for "goods he contracted". 4. = V. § 35 (4). — E. § 30; V. 35; T. 35; S. A. 30; W. A. 30; N. Z. 32. — For a case illustrating the rule laid down in subsection 3, see *Romberg v. Gilbert*, 11 Q. L. J. 96.

33. 1. = V. § 36 (1), except: "of them" is substituted for "thereof". 2. = V. § 36 (2), except: "when" is substituted for "where". — E. § 31; V. 36; T. 36; S. A. 31; W. A. 31; N. Z. 33. — Cp. *Romberg v. Gilbert*, 11 Q. L. J. 96.

34. 1. = V. § 37 (1), except: "when" is substituted for "where". 2. = V. § 37 (2). 3. = V. § 37 (3), except: "when" is substituted for "where".

35. = V. § 38, except: the beginning word is "when", instead of "where".

36. = V. § 39, except: in (1) "when" is substituted for "where".

37. = V. § 40.

38. = V. § 41, except: "when" is substituted for "where".

39. = V. § 42, except: in lieu of the sentence beginning with "nothing in this section" is substituted the following: "This section does not affect the rights of the seller if the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract".

Part V. Rights of unpaid Seller against the Goods.

40. = V. § 43.

41. 1. = V. § 44 (1), except: (a) reads as follows: a) A right to retain the goods for the price while he is in possession of them. 2. = V. § 44 (2), except: "when" is substituted for "where" in both places where the latter occurs, and "retention" is substituted for "lien".

Unpaid seller's right of retention.

42. 1. = V. § 45 (1), except: the beginning word of a), b), and c) is "when" instead of "where". 2. = V. § 45, except: "retention" is substituted for "lien", and "or custodier" is omitted.

43. = V. § 46, except: "when" is substituted for "where"; "lien or" is omitted; "that right" is substituted for "the lien or right of retention".

44. 1. = V. § 47 (1), except: "lien or" is omitted; "or custodier" is omitted. 2. = V. § 47 (2), except: "lien or" is omitted; "thereof" is substituted for "thereon", and "that right" for "his lien or right of retention".

Stoppage in transitu.

45. = V. § 48.

46. 1. = V. § 49 (1), except: "or custodier" is omitted in both places where it occurs. 2. = V. § 49 (2). 3. = V. § 49 (3), except "or custodier" is omitted in both places where it occurs. 4. = V. § 49 (4), except: "or custodier" is omitted. 5. = V. § 49 (5). 6. = V. § 49 (6), except: "when" is substituted for "where", and "or custodier" is omitted. 7. = V. § 49 (7), except: "when" is substituted for "where".

47. 1. = V. § 50 (1), except: "or custodier" is omitted. 2. = V. § 50 (2), except: "or custodier" is omitted.

Re-sale by buyer or seller.

48. = V. § 51, except: "lien or" is omitted after "unpaid seller's right of" in all places where it occurs.

Sale not generally rescinded by lien or stoppage in transitu. 49. 1. Subject to the provisions of this section, a contract of sale is not rescinded by the mere exercise by an unpaid seller of his right of retention or stoppage *in transitu*. 2. When an unpaid seller who has exercised his right of retention or stoppage *in transitu* re-sells the goods, the buyer acquires a good title to them as against the original buyer. 3. When the goods are of a perishable nature, or when the unpaid seller gives notice to the buyer of his intention to re-sell, and the buyer does not within a reasonable time pay or tender the price, the unpaid seller may re-sell the goods and recover from the original buyer damages for any loss occasioned by his breach of contract. 4. When the seller expressly reserves a right of re-sale in case the buyer should make default, and on the buyer making default, re-sells the goods, the original contract of sale is thereby rescinded, but without prejudice to any claim that the seller may have for damages. — E. § 48; V. 52; T. 52; S. A. 47; W. A. 47; N. Z. 49.

Part VI. Actions for Breach of the Contract. Remedies of the seller.

50. 1. = V. § 53 (1), except: "when" is substituted for "where". 2. = V. § 53 (2), except: "when" is substituted for "where".

51. 1. = V. § 54 (1), except: "when" is substituted for "where". 2. = V. § 54 (2). 3. = V. § 54 (3), except: "when" is substituted for "where".

Remedies of the buyer.

52. 1. = V. § 55 (1), except: "when" is substituted for "where". 2. = V. § 55 (2). 3. = V. § 55 (3), except: "when" is substituted for "where". — E. § 51; V. 55; T. 55; S. A. 50; W. A. 50; N. Z. 52. — Where goods are bought in one country, to be delivered in another, and a breach of the contract is made by the seller, the market price governing the measure of damages is ordinarily the market price of the country where the goods are bought, but may be that of the country where they are to be delivered. — *Reis v. Carling*, (1906) S.R. (Q.) 38; (1906) Q. W. N. 9. The measure of damages is the difference between the contract price and the market price. — *Howes Bros. v. Queensland Milling Co.*, 8 Q. L. J. 83.

53. = V. § 56, except: "an action" is substituted for "any action"; "or decree" is omitted in all places where it occurs.

54. 1. = V. § 57 (1), except: "when there is a breach" is substituted for "where there is a breach", "when the buyer elects" for "where the buyer elects", and "a breach" for "any breach". 2—4. = V. § 57 (2—4).

Interest and special damages. 55. This Act does not affect the right of a buyer or a seller to recover interest or special damages in any case in which by law interest or special damages are recoverable, or to recover money paid when the consideration for the payment of it has failed. — E. § 54; V. 58; T. 58; S. A. 53; W. A. 53; N. Z. 55.

Part VII. Supplementary.

56. = V. § 59, except: "when" is substituted for "where", and "usage is such" for "usage be such".

Reasonable time a question of fact. 57. Whenever, in this Act, reference is made to a reasonable time, the question what is a reasonable time is a question of fact. — E. § 56; V. 60; T. 60; S. A. 55; W. A. 55; N. Z. 57.

Rights, etc., enforceable by action. 58. When any right, duty, or liability is declared by this Act, it may, unless by this Act otherwise provided, be enforced by action. — E. § 57; V. 61; T. 61; S. A. 56; W. A. 56; N. Z. 58.

59. = V. § 62, except: in (1) "when" is substituted for "where", and "contract for sale" for "contract of sale"; in (3) "when" is substituted for "where", and "it is not lawful" for "it shall not be lawful"; in (4) "or upset" is omitted; in (5), which is not separately numbered in the Queensland Act, "when" is substituted for "where".

Repeal. 60. The enactments mentioned in the Schedule to this Act are hereby repealed as from the commencement of this Act, to the extent in that Schedule mentioned. But such repeal does not affect anything done or suffered, or any right, title, or interest acquired or accrued, before the commencement of this Act, or any legal proceeding or remedy in respect of any such thing, right, title, or

interest. When in any Act reference is made to any of the said repealed provisions, such reference is to be taken to be the corresponding provisions of this Act. — E. § 60; V. 4; T. 4; S. A. 58; W. A. 58; N. Z. 60. This section is repealed.

61. 1. = V. § 5 (1), except: "shall" is omitted. 2. = V. § 5 (2), except: "shall" is omitted. 3. = V. § 5 (3), except: "repeal effected by it affects" is substituted for "repeal effected thereby shall affect". 4. = V. § 5 (4).

Schedule.

Session and Number of Act.	Title of Act and Extent of Repeal.
31 Victoria, No. 17.	Common Law Practice Act of 1867. In part, that is to say section 18.
31 Victoria, No. 22.	Statute of Frauds and Limitations of 1867. In part, that is to say, section 8.
31 Victoria, No. 36.	Mercantile Act of 1867. In part, that is to say, section 3.

5. Western Australia. 59 Vic. No. 41. An Act for codifying the law relating to the Sale of Goods (12th October, 1895).

Part I. Formation of the Contract. Contract of sale.

1—2. = V. § 6—7.

Formalities of the contract.

3. = V. § 8.

4. = V. § 9. — E. § 4; V. 9; T. 9; S. A. 4; Q. 7; N. Z. 6. — The memorandum must embody all of the essential provisions of the contract, *inter alia* a description of the goods to be delivered. — *Woolhouse v. Smythe*, 8 W. A. L. R. 168.

Subject-matter of contract.

5—7. = V. § 10—12.

The price.

8—9. = V. § 13—14.

Conditions and warranties.

10. = V. § 15.

11. = V. § 16, except: in (4) "condition of warranty" is substituted for "condition or warranty". This is obviously a typographical error.

12—13. = V. § 17—18.

14. = V. § 19. — E. § 14; V. 19; T. 19; S. A. 14; Q. 17; N. Z. 16. — In a sale of articles by description, without designation of quality, a delivery of goods of merchantable quality is a fulfilment of the contract. — *Couch, Calder & Co. v. Condit & Launder*, 4 W. A. L. R. 126. Although upon the sale of a chattel there is no implied warranty that it will answer a particular purpose, yet, if the contract is made to supply an article for a particular purpose in such a way that it appears that the buyer relies on the seller's skill or judgment, then, if the chattel is of a description which it is in the course of the seller's business to supply, he is bound to supply an article reasonably fit for the purpose, and is considered as warranting that it is so fit. — *Denny v. Calthrop*, 6 W. A. L. R. 227. The question whether there is a warranty or not is one of fact, and not of law. — *Dempster & Walsh v. Simpson*, 7 W. A. L. R. 103. See this case for a consideration of the question of the measure of damages in the case of the sale of an animal infected with disease. In the case of a sale of seed wheat it was held that there was an implied warranty that the wheat supplied should be reasonably fit for the purpose for which it was required, namely, sowing, and that consequently to supply wheat largely intermixed with drake or darnel seed so as to be useless for planting purposes was a breach of such implied warranty, and rendered the seller liable in damages. The measure of damages is the difference between the estimated value of the crop had the seed been good, and the value of the crop actually reaped. — *Doscas v. Schmetzer*, 8 W. A. L. R. 173.

Sale by sample.

15. = V. § 20.

Part II. Effects of the Contract.

Transfer of property as between seller and buyer.

16—20. = V. § 21—25.

Transfer of title.

21. 1. = V. § 26 (1). 2. Provided also that nothing in this Act shall affect:
a) The provisions of *The Factors Acts, 1823 to 1878*, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof; b) = V. § 26 (2) (b).

22. = V. § 27 (1).

23—24. = V. § 28—29.

25. = V. § 30, except: in (3) “shall mean” is substituted for “means”.

26. = V. § 31, except: in (1) “or warrant” is omitted after “*fieri facias*”; “and no writ of attachment” is omitted after “provided that no such writ”; “or warrant” is omitted after “notice that such writ”.

Part III. Performance of the Contract.

27—29. = V. § 32—34.

30. = V. § 35. — E. § 30; V. 35; T. 35; S. A. 30; Q. 32; N. Z. 32. — The buyer can be required to accept the exact quantity contracted for, unless the original contract was subsequently modified. — *McClay v. Seeligson*, 7 W. A. L. R. 87.

31—32. = V. § 36—37.

33. = V. § 38, except: “cost of transit” is substituted for “course of transit”. This is obviously a typographical error.

34—36. = V. § 39—41.

37. = V. § 42, except: “provided that” is inserted before “nothing in this section”.

Part IV. Rights of unpaid Seller against the Goods.

38—39. = V. § 43—44.

Unpaid seller's lien.

40—42. = V. § 45—47.

Stoppage in transitu.

43—45. = V. § 48—50.

Re-sale by buyer or seller.

46—47. = V. § 51—52.

Part V. Actions for Breach of the Contract.

Remedies of the seller.

48. = V. § 53.

49. = V. § 54. — E. § 50; V. 54; T. 54; S. A. 49; Q. 51; N. Z. 51. — The measure of damages is the difference between the contract price and the price which the goods would have realised if sold immediately after repudiation. — *McClay v. Seeligson*, 7 W. A. L. R. 87.

Remedies of the buyer.

50—53. = V. § 55—58.

Part VI. Supplementary.

54—57. = V. § 59—62.

58. = S. A. § 58, except: “Colony of Western Australia” is substituted for “Province of South Australia”.

59. = V. § 5, except: in (1) “bankruptcy” is substituted for “insolvency”.

60. 1. = V. § 3 (1), except: the definition of “title” is as follows: “Document of title to goods” has the same meaning as it has in *The Factors Acts, 1823 to 1878*, or any act amending or substituted for the same; “and” is omitted before “warranty”. 2. = V. § 3 (2). 3. A person is deemed to be insolvent within the meaning of this Act who either has ceased to pay his debts in the ordinary course of business, or can not pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he has become bankrupt or not. 4. = V. § 3 (4).

61. = V. § 2, except “January” is substituted for “July”.

62. = V. § 1, except: “1895” is substituted for “1896”.

Schedule.

This Schedule is to be read as referring to the revised edition of the Statutes prepared under the direction of the Statute Law Committee of the Imperial Parliament.

Enactments Referred To.

Session and Chapter.	Title of Act.	Extent of Repeal.
1 Jac. 1, c. 21. 29 Chas. 2, c. 3.	An Act against Brokers. An Act for the prevention of Frauds and Perjuries.	The whole Act. In part, that is to say, sections 15 and 16 ¹).
9 Geo. 4, c. 14.	An Act for rendering a Written Memorandum necessary to the validity of certain Promises and Engagements.	In part, that is to say, section 7.
19 & 20 Vic. c. 97 (Im- perial) adopted by the 31 Vic. No. 8.	The Mercantile Law Amendment Act, 1856.	In part, that is to say, sections 1 and 2.

Factors Acts.²

1. New South Wales. No. 28 of 1899. An Act to consolidate the enactments relating to Advances made to Agents intrusted with Goods (23d November, 1899).

Short title. 1. This Act may be cited as the *Factors Act, 1899*. — E. 52 & 53 Vic. c. 45, § 17; T. 1; S. A. 1; Q. 1; W. A. 1; N. Z. 1.

Repeal. 2. The Act thirtieth Victoria number thirteen is hereby repealed. — E. 52 & 53 Vic. c. 45, § 14; T. 4; Q. 15.

Imperial Acts. 3. The Imperial Acts fourth George the Fourth chapter eighty-three and sixth George the Fourth chapter ninety-four are hereby declared to be in force in New South Wales.

Interpretation. 4. In this Act, unless the context or subject-matter otherwise indicates or requires: "Advance" means any loan or advance made upon the security of goods or documents of title thereto, whether the payment in respect of such loan or advance is made in money, or by bill of exchange, or other negotiable security, and includes a further or continuing advance. "Document of title" includes any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, warrant, or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, and any document which by indorsement or delivery authorises, or purports to authorise, the holder to transfer or receive the goods thereby represented. "Factor" means an agent intrusted with the possession of goods, or of the documents of title to goods. "Owner" means the owner of any goods, or any documents of title to goods, intrusted to any factor. — E. 52 & 53 Vic. c. 45, § 1; T. 3; S. A. 9; Q. 2; W. A. 5; N. Z. 2.

Intrusting, etc., of document of title. Possession. Possession of documents of title. Possession evidence of intrusting. 5. For the purposes of this Act a) Every contract giving a lien upon, or pledging, any document of title to goods shall be deemed to give a lien upon, or pledge of, the goods indicated in and by such document; b) Where any goods or documents of title to goods are held by any person on behalf, or subject to the control, of any factor, the same shall be deemed to be in the possession of such factor; c) Any factor possessed of any documents of title to goods, whether 1. Derived immediately from the owner of the goods, or 2. Obtained by reason of his having been intrusted with the possession of the goods, or of any other document of title thereto, shall be deemed to have been intrusted with the possession of the goods represented by such documents of title; d) Every agent in possession of goods, or of any document of title to goods, shall be deemed to have been intrusted therewith by the owner, unless the contrary is shown in evidence. — E. 52 & 53 Vic. c. 45, § 2, 3, 8, 9; T. 5, 6, 11, 12; S. A. 6, 8, 9; Q. 3, 4, 9, 10; W. A. 2—5; N. Z. 3, 4, 5.

Bona fide contracts with factor valid. Goods delivered after advance made. 6. 1. Any contract, not otherwise invalid, *bonâ fide* made by any person with

¹) Commonly cited as sections 16 and 17. — ²) The references in the notes are to the English Acts indicated, and to the Acts of the Australian States and to the *Mercantile Law Act, 1908* of New Zealand herein reprinted.

any factor by way of pledge of, or lien or other security over, or for an advance upon the security of goods, or the documents of title to goods, in the possession of such factor, shall be valid and binding upon, and good against, any owner of such goods, although such person had notice that such factor was not the true owner of such goods. 2. Any advance on the faith of any contract in writing to consign, deposit, transfer, or deliver any goods or documents of title, shall, if the goods or documents are received by the person making the advance, without notice that the factor had no authority to pledge or give security over the same, be taken to be an advance on the security of such goods or documents, although they are not received by such person until after the advance is made. — E. 52 & 53 Vic. c. 45, § 2, 3, 8, 9; T. 5, 6, 11, 12; S. A. 8, 9; Q. 3, 4, 9, 10; W. A. 2—5.

Bona fide exchange valid. Proviso. 7. Where any such contract for pledge, lien, or security is made in consideration of the delivery or transfer to such factor of any other goods, or document of title to goods, or negotiable security upon which such person had at the time a valid and available lien or security for, or in respect of, a previous advance by virtue of a contract made with such factor, such contract, if *bonâ fide* on the part of such person, shall be deemed to be a contract for an advance within the last preceding section: Provided that the lien acquired under the last-mentioned contract, upon the goods or documents deposited in exchange, shall not exceed the value of the goods, or documents of title, or negotiable security, delivered or exchanged. — E. 52 & 53 Vic. c. 45, § 5; T. 8; S. A. 7; Q. 6; N. Z. 6.

Limited construction of this Act. Civil liability of factor. 8. 1. Nothing in this Act shall be construed to validate any contract or to protect any advance or exchange: a) Which is not made *bonâ fide*; or b) Which is made by a person having notice that such factor has not authority to make the same, or is acting *malâ fide* in respect thereof; and this Act shall not be construed; c) To extend to or protect any lien or pledge for or in respect of any antecedent debt owing by any factor to any person with or to whom such lien or pledge is given; nor d) To authorise any factor to deviate from any express order or authority received from the owner. 2. Nothing in this Act shall be construed to lessen or affect the civil liability of any factor for any breach of duty or contract, or for failing to fulfil his orders or authority in respect of any such contract, lien, or pledge. — E. 52 & 53 Vic. c. 45, § 4; T. 15; S. A. 7, 8; Q. 5, 13; N. Z. 10.

Owner may redeem. Bankruptcy of factor. 9. 1. Nothing in this Act shall be construed to prevent any owner: a) From having the right to redeem any goods or documents of title to goods pledged as aforesaid, at any time before the goods have been sold, upon repayment of the amount of the lien thereon, or restoration of the securities in respect of which such lien exists, and upon payment and satisfaction to such factor, if by him required, of any sum of money for or in respect of which such factor would be entitled to retain the said goods or documents, by way of lien against such owner; or b) From recovering from the person with whom such goods or documents have been pledged, or who has any lien thereon, any sum of money remaining in his hands as the produce of the sale of such goods after deducting the amount of such pledge, or lien. 2. In case of the bankruptcy of such factor the owner so redeeming such goods shall, in respect of the sum paid by him on account of such factor for such redemption, be held to have paid such sum for the use of such factor before his bankruptcy; or, if the goods have not been so redeemed, the owner shall be deemed a creditor of such factor for the value of the goods so pledged at the time of the pledge, and shall in either case be entitled to prove for, or set-off, the sum so paid or the value of such goods as the case may be. — E. 52 & 53 Vic. c. 45, § 12; T. 15 (2, 3); S. A. 10, 11; Q. 13 (2, 3); N. Z. 10.

2. Tasmania. 55 Vic. No. 4. An Act to amend and consolidate the law relating to Advances made to Agents intrusted with Goods (13th August, 1891).

Preliminary.

Short title. 1. This Act may be cited as *The Factors Act, 1891*. — E. 52 & 53 Vic. c. 45, § 17; N. S. W. 1; S. A. 1; Q. 1; W. A. 1; N. Z. 1.

Commencement. 2. This Act shall commence and come into operation on the first day of January, One thousand eight hundred and ninety-two. — S. A. 12; W. A. 6; N. Z. 1.

Interpretation. 3. For the purposes of this Act: The expression "mercantile agent" shall mean a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods. A person shall be deemed to be in possession of goods or of the documents of title to goods, where the goods or documents are in his actual custody, or are held by any other person subject to his control or for him or on his behalf. The expression "goods" shall include wares and merchandise. The expression "document of title" shall include any bill of lading, warehousekeeper's certificate, and warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise either by indorsement or by delivery the possessor of the document to transfer or receive goods thereby represented. The expression "pledge" shall include any contract pledging or giving a lien or security on goods, whether in consideration of an original advance or of any further or continuing advance, or of any pecuniary liability. The expression "person" shall include any body of persons, corporate or unincorporate. — E. 52 & 53 Vic. c. 45, § 1; N. S. W. 4; S. A. 9; Q. 2; W. A. 5; N. Z. 2.

Repeal. 4. 1. The enactments mentioned in the Schedule (1) shall not, after the commencement of this Act, extend to or be in force in this Colony; but this provision shall not affect any right acquired or liability incurred before the commencement of this Act under any such enactment. 2. The enactment mentioned in the Schedule (2) is hereby repealed; but this repeal shall not affect any right acquired or liability incurred before the commencement of this Act. — E. 52 & 53 Vic. c. 45, § 14; N. S. W. 2; Q. 15.

Dispositions by mercantile agents.

Powers of mercantile agent with respect to disposition of goods. 5. 1. Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same: Provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same. 2. Where a mercantile agent has, with the consent of the owner, been in possession of goods, or of the documents of title to goods, any sale, pledge, or other disposition which would have been valid if the consent had continued shall be valid notwithstanding the determination of the consent: Provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined. 3. Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first-mentioned documents shall, for the purposes of this Act, be deemed to be with the consent of the owner. 4. For the purposes of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary. — E. 52 & 53 Vic. c. 45, § 2; N. S. W. 5, 6, 7; S. A. 8, 9; Q. 3; W. A. 2; N. Z. 3.

Effect of pledges of documents of title. 6. A pledge of the documents of title to goods shall be deemed to be a pledge of the goods. — E. 52 & 53 Vic. c. 45, § 3; N. S. W. 5, 6, 7; S. A. 8, 9; Q. 4; W. A. 2; N. Z. 4.

Pledge for antecedent debt. 7. Where a mercantile agent pledges goods as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge. — E. 52 & 53 Vic. c. 45, § 4; N. S. W. 8; S. A. 8; Q. 5; N. Z. 5.

Rights acquired by exchange of goods or documents. 8. The consideration necessary for the validity of a sale, pledge, or other disposition of goods in pursuance of this Act may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable

security, or any other valuable consideration; but where goods are pledged by a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange. — E. 52 & 53 Vic. c. 45, § 5; N. S. W. 7; S. A. 7; Q. 6; N. Z. 6.

Agreements through clerks, etc. 9. For the purposes of this Act, an agreement made with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on his behalf, shall be deemed to be an agreement with the agent. — E. 52 & 53 Vic. c. 45, § 6; Q. 7; N. Z. 7.

Provisions as to consignors and consignees. 10. 1. Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person. 2. Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition by a mercantile agent. — E. 52 & 53 Vic. c. 45, § 7; Q. 8; N. Z. 8.

Dispositions by sellers and buyers of goods.

Disposition by seller remaining in possession. 11. Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same. — E. 52 & 53 Vic. c. 45, § 8; N. S. W. 5; S. A. 9; Q. 9; W. A. 3.

Disposition by buyer obtaining possession. 12. Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge, or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner. — E. 52 & 53 Vic. c. 45, § 9; N. S. W. 5; S. A. 9; Q. 10; W. A. 4.

Effect of transfer of documents, or vendor's lien, or right of stoppage in transitu. 13. Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*. — E. 52 & 53 Vic. c. 45, § 10; Q. 11; W. A. 5; N. Z. 9.

Supplemental.

Mode of transferring documents. 14. For the purposes of this Act the transfer of a document may be by endorsement, or, where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery. — E. 52 & 53 Vic. c. 45, § 11; N. S. W. 3; S. A. 9; Q. 12; W. A. 5; N. Z. 10.

Saving for rights of true owner. 15. 1. Nothing in this Act shall authorise an agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability, civil or criminal, for so doing. 2. Nothing in this Act shall prevent the owner of goods from recovering the goods from an agent or his trustee in bankruptcy at any time before the sale or pledge thereof, or shall prevent the owner of goods pledged by an agent from having the right to redeem the goods at any time before the sale thereof, on

satisfying the claim for which the goods were pledged, and paying to the agent, if by him required, any money in respect of which the agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner; or from recovering from any person with whom the goods have been pledged any balance of the money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien. 3. Nothing in this Act shall prevent the owner of goods sold by an agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against the agent. — E. 52 & 53 Vic. c. 45, § 12; N. S. W. 8, 9; S. A. 10, 11; Q. 13; N. Z. 11.

Saving for common law powers of agent. 16. The provisions of this Act shall be construed in amplification and not in derogation of the powers exercisable by an agent independently of this Act. — E. 52 & 53 Vic. c. 45, § 13; N. S. W. 3; Q. 14; N. Z. 12.

Schedule.

(1)

Reference to Act.	Title.
4 Geo. 4. c. 83.	An Act for the better protection of the property of merchants and others who may hereafter enter into contracts or agreements in relation to goods, wares, or merchandizes intrusted to Factors or Agents.
6 Geo. 4. c. 94.	An Act to alter and amend An Act for the better protection of the property of merchants and others who may hereafter enter into contracts or agreements in relation to goods, wares, or merchandize intrusted to Factors or Agents.

(2)

32 Vic. No. 13.	An Act to amend the law relating to advances made to agents entrusted with goods.
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3. South Australia. 24 & 25 Vic. No. 3. An Act to amend the laws affecting Trade and Commerce (30th August, 1861).

Short title of Act. 1. This Act may be cited as *The Mercantile Law Amendment Act, 1861*.

[§§ 2—5 do not relate to factors.]

Bonâ fide advances to persons intrusted with the possession of goods or documents of title though known to be agents, protected. 6. Any agent who shall hereafter be intrusted with the possession of goods, or of the documents of title to goods, shall be deemed and taken to be the owner of such goods and documents, so far as to give validity to any contract or agreement, by way of pledge, lien, or security, *bonâ fide* made by any person with such agent so intrusted as aforesaid, as well for any original loan, advance, or payment made upon the security of such goods or documents, as also for any further or continuing advance in respect thereof; and such contract or agreement shall be binding upon and against the owner of such goods, and all other persons interested therein, notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent. — E. 5 & 6 Vic. c. 39, § 1; N. S. W. 5, 6; T. 5, 6, 11, 12; Q. 3, 4, 10, 11; W. A. 2—5; N. Z. 3, 4.

Bonâ fide deposits in exchange protected. But no lien beyond the value of the goods given up. 7. Where any such contract or agreement for pledge, lien, or security, shall be made in consideration of the delivery or transfer to such agent of any other goods, or merchandise, or document of title, or negotiable security, upon which the person so delivering up the same had at the time a valid and available lien and security, for or in respect of a previous advance, by virtue of some contract or agreement made with such agent, such contract and agreement, if *bonâ fide* on the part

of the person with whom the same may be made, shall be deemed to be a contract, made in consideration of an advance, within the true intent and meaning of this Act, and shall be as valid and effectual, to all intents and purposes, and to the same extent as if the consideration for the same had been a *bonâ fide* present advance of money: Provided that the lien acquired under such last-mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandise which, or the documents of title to which, or the negotiable security which shall be delivered up and exchanged. — E. 5 & 6 Vic. c. 39, § 2; N. S. W. 7; T. 8; Q. 6; N. Z. 6.

Act to be construed to protect only transactions *bonâ fide* without notice that the agent pledging is acting without authority, or *malâ fide* against the owner. 8. This Act, and every matter and thing herein contained, shall be deemed and construed to give validity to such contracts and agreements only, and to protect only such loans, advances, and exchanges, as shall be made *bonâ fide* and without notice; that the agent making such contracts or agreements as aforesaid has not authority to make the same, or is acting *malâ fide* in respect thereof, against the owner of such goods and merchandise; and nothing herein contained shall be construed to extend to or protect any lien or pledge for or in respect of any antecedent debt owing from any agent to any person with or to whom such lien or pledge shall be given; nor to authorize any agent, intrusted as aforesaid, in deviating from any express orders or authority received from the owner; but that, for the purpose and to the intent of protecting all such *bonâ fide* loans, advances, and exchanges, as aforesaid (though made with notice of such agent not being the owner, but without any notice of the agent's acting without authority), and to no further or other intent or purpose such contract or agreement as aforesaid shall be binding on the owner, and to all other persons interested in such goods. — E. 5 & 6 Vic. c. 39, § 3; N. S. W. 5, 6, 7; T. 5, 6, 7; Q. 3, 4, 5; W. A. 2—5; N. Z. 3, 4, 5.

Meaning of the term "document or title". When agent intrusted. When in possession. 9. Any bill of lading, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented, shall be deemed and taken to be a document of title within the meaning of this Act; and any agent intrusted as aforesaid, and possessed of any such document of title, whether derived immediately from the owner of such goods or obtained by reason of such agent's having been intrusted with the possession of the goods, or of any other document of title thereto, shall be deemed and taken to have been intrusted with the possession of the goods represented by such document of title as aforesaid, and all contracts pledging or giving a lien upon such document of title as aforesaid shall be deemed and taken to be respectively pledges of and liens upon the goods to which the same relates, and such agent shall be deemed to be possessed of such documents, whether the same shall be in his actual custody or shall be held by any other person subject to his control, or for him, or on his behalf, and where any loan or advance shall be *bonâ fide* made to any agent intrusted with and in possession of any such goods or documents of title as aforesaid, on the faith of any contract or agreement in writing, to consign, deposit, transfer, or deliver such goods or documents of title as aforesaid, and such goods or documents of title shall actually be received by the person making such loan or advance, without notice that such agent was not authorized to make such pledge or security, every such loan or advance shall be deemed and taken to be a loan or advance on the security of such goods or documents of title within the meaning of this Act, though such goods or documents of title shall not actually be received by the person making such loan or advance till the period subsequent thereto, and any contract or agreement, whether made direct with such agent, as aforesaid, or with any clerk or other person on his behalf, shall be deemed a contract or agreement with such agent; and any payment made, whether by money or bills of exchange, or other negotiable security, shall be deemed and taken to be an advance within the meaning of this Act; and an agent in possession, as aforesaid, of such goods or documents shall be taken, for the purposes of this Act, to have been intrusted therewith by the owner thereof, unless the contrary can be shown in evidence. — E. 5 & 6 Vic. c. 39, § 4; N. S. W. 5, 6, 11, 12; T. 5, 6; Q. 3, 4, 9, 10; W. A. 2—5; N. Z. 3, 4.

Right of owner to redeem or to recover balance of proceeds. 10. Nothing herein contained shall prevent such owner as aforesaid from having the right to redeem such goods or documents of title pledged as aforesaid, at any time before such goods shall have been sold, upon repayment of the amount of the lien thereon, or restoration of the securities in respect of which such lien may exist, and upon payment or satisfaction to such agent, if by him required, of any sum of money for or in respect of which such agent would by law be entitled to retain the same goods or documents, or any of them, by way of lien as against such owner, or to prevent the said owner from recovering of and from such person with whom any such goods or documents may have been pledged, or who shall have any such lien thereon as aforesaid, any balance or sum of money remaining in his hands as the produce of the sale of such goods, after deducting the amount of the lien of such person under such contract or agreement as aforesaid. — E. 5 & 6 Vic. c. 39, § 7; N. S. W. 9 (1); T. 15 (2); Q. 13 (2); N. Z. 11 (2).

In case of insolvency, owner to prove for amount paid to redeem, or for value of goods if unredeemed. 11. In case of the insolvency of any such agent, the owner of the goods which shall have been so redeemed by such owner as aforesaid, shall, in respect of the sum paid by him on account of such agent for such redemption, be held to have paid such sum for the use of such agent before his insolvency, or in case the goods shall not be so redeemed, the owner shall be deemed a creditor for the value of the goods so pledged at the time of the pledge, and shall, if he shall think fit, be entitled, in either of such cases, to prove for or set off the sum so paid, or the value of such goods, as the case may be. — E. 5 & 6 Vic. c. 39, § 7; N. S. W. 9 (2); T. 15 (3); Q. 13 (3); N. Z. 11 (3).

Commencement of Act. 12. This Act shall take effect from the first day of January, 1862. — E. 5 & 6 Vic. c. 39, § 1; T. 2; W. A. 6; N. Z. 1.

4. Queensland. 56 Vic. No. 8. An Act to amend the law relating to Factors (23d August, 1892).

1. = T. § 1, except: "1892" is substituted for "1891".

Preliminary.

Definitions. 2. In this Act: The expression "mercantile agent" means a mercantile agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods. The term "goods" includes wares and merchandise. The expression "document of title" includes a bill of lading, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented. The term "pledge" includes any contract pledging, or giving a lien or security on, goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability. For the purposes of this Act a person is deemed to be in possession of goods or of the documents of title to goods when the goods or documents are in his actual custody or are held by any other person subject to his control or for him or on his behalf. — E. 52 & 53 Vic. c. 45, § 1; N. S. W. 4; T. 3; S. A. 9; W. A. 5; N. Z. 2.

Dispositions by mercantile agents.

3. = T. § 5, except: in (1), (2), and (3) the beginning word is "when" instead of "where".

4. = T. § 6.

5. = T. § 7, except: "when" is substituted for "where".

6. = T. § 8, except: throughout "when" is substituted for "where".

7. = T. § 9.

8. = T. § 10, except: in (1) "when" is substituted for "where".

Dispositions by sellers and buyers of goods.

9. = T. § 11, except: "when" is substituted for "where".

10. = T. § 12, except: "when" is substituted for "where". — E. 52 & 53 Vic. c. 45, § 9; N. S. W. 5; T. 12; S. A. 9; W. A. 4. — See *Kaye & Sons v. Glassey*, 7 Q. L. J. 33
11. = T. § 13, except: "when" is substituted for "where".

Supplemental.

12. = T. § 14, except: "if" is substituted for "where".
13. = T. § 15, except: in (2) "any balance of money" is substituted for "any balance of the money".
14. = T. § 16, except: "enlargement" is substituted for "amplification".

Repeal of sections 8 to 19 of 31 Vic. No. 36. 15. Sections eight to nineteen inclusive of *The Mercantile Act of 1867* are hereby repealed, but this repeal shall not affect any right acquired or liability incurred before the passing of this Act under the enactments hereby repealed. When in any act reference is made to any of the said repealed enactments, the reference shall be taken to be to the corresponding provisions of this Act. — E. 52 & 53 Vic. c. 45, § 14; N. S. W. 2; T. 4.

5. Western Australia. a) 7 Vic. No. 13. An Act for adopting certain Acts of Parliament, etc., and applying the same in the Administration of Justice in Western Australia in like manner as the other laws of England are applied therein (30th May, 1844).

(This Act adopts by reference, *inter alia*, An Act to amend the law relating to Advances *bonâ fide* made to Agents intrusted with Goods (5 & 6 Vic. c. 39).

The English statutes relating to factors, 4 Geo. 4, c. 83, and 6 Geo. 4, c. 94, are in force, so far as they are applicable, by virtue of the adoption of all English statutes of a general nature in force in England on 1st June, 1829.

b) 42 Vic. No. 3. An Act to amend the Factors Acts (3d July, 1878).

Factors Acts defined. 1. In this Act the expression "the principal Acts" means the following Acts, that is to say: The Act of the 4th George 4th (1823), c. 83. The Act of the 6th George 4th (1825), c. 94. The Act of the 5th and 6th of Her Majesty (1842), c. 39. And the said Acts and this Act may be cited for all purposes as *The Factors Acts, 1823 to 1878*. — E. 40 & 41 Vic. c. 39, § 1; N. S. W. 1; T. 1; S. A. 1; Q. 1; N. Z. 1.

Amendment of the law with respect to secret revocation of intrustment or agency. 2. Where any agent or person has been intrusted with and continues in the possession of any goods, or documents of titles to goods, within the meaning of the principal Acts, as amended by this Act, any revocation of his intrustment or agency shall not prejudice or affect the title or rights of any other person who without notice of such revocation purchases such goods or makes advances upon the faith or security of such goods or documents. — E. 40 & 41 Vic. c. 39, § 2; N. S. W. 5, 6; N. Z. 3 (1, 2).

With respect to vendors permitted to retain documents of title to goods. 3. Where any goods have been sold, and the vendor or any person on his behalf continues or is in the possession of the documents of title thereto, any sale, pledge, or other disposition of the goods or documents made by such vendor, or any person or agent intrusted by the vendor with the goods or documents within the meaning of the principal Acts, as amended by this Act, so continuing or being in possession, shall be as valid and effectual as if such vendor or person were an agent or person intrusted by the vendee with the goods or documents within the meaning of the principal Acts, as amended by this Act, provided the person to whom the sale, pledge, or other disposition is made has not notice that the goods have been previously sold. — E. 40 & 41 Vic. c. 39, § 3; N. S. W. 5; T. 11; S. A. 9; Q. 9.

With respect to vendees permitted to have possession of documents of title to goods. 4. Where any goods have been sold or contracted to be sold, and the vendee or any person on his behalf, obtains the possession of the documents of title thereto from the vendor or his agents, any sale, pledge, or disposition of such goods or documents by such vendee so in possession or by any other person or agent intrusted

by the vendee with the documents within the meaning of the principal Acts, as amended by this Act, shall be as valid and effectual as if such vendee or other person were an agent or person intrusted by the vendor with the documents within the meaning of the principal Acts, as amended by this Act, provided the person to whom the sale, pledge, or other disposition is made has not notice of any lien or other right of the vendor in respect of the goods. — E. 40 & 41 Vic. c. 39, § 4; N. S. W. 5; T. 12; S. A. 9; Q. 10.

With respect to transfers of documents of title. 5. Where any document of title to goods has been lawfully indorsed or otherwise transferred to any person as a vendee or owner of the goods, and such person transfers such document by indorsement (or by delivery where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer), to a person who takes the same *bonâ fide* and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu*, as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*. — E. 40 & 41 Vic. c. 39, § 5; N. S. W. 3; T. 13, 14; S. A. 9; Q. 11, 12; N. Z. 9, 10. — See also *Warrants for Goods Indorsement Act, 1898* (62 Vic. No. 3).

Act not to be retrospective. 6. This Act shall apply only to acts done and rights acquired after the passing of this Act. — E. 40 & 41 Vic. c. 39, § 6; T. 2; S. A. 12; N. Z. 1.

Secret Commissions Acts.¹⁾

1. Victoria. 5 Edw. 7, No. 1974. An Act for the prohibition of Secret Commissions (6th October, 1905).

Short title and commencement. 1. 1. This Act may be cited as the *Secret Commissions Prohibition Act, 1905*. 2. This Act shall come into operation on the first day of January, One thousand nine hundred and six. — E. § 4; C. 1; T. 1; W. A. 1.

Receipt or solicitation of secret commission by an agent a misdemeanour. Gift or offer of secret commission to an agent a misdemeanour. 2. If any agent corruptly receives or solicits from any person for himself or for any other person any valuable consideration a) As an inducement or reward for or otherwise on account of doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or b) The receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business; or if any person corruptly gives or offers to any agent any valuable consideration a) As an inducement or reward for or otherwise on account of doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or b) The receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business, he shall be guilty of a misdemeanour. — E. § 1 (1); C. 4; T. 2, 3; S. A. 4, 5; W. A. 2, 3; N. Z. 3, 4. — The consideration is given "corruptly" if it is given to the agent without the knowledge of his principal in order to influence the conduct of the agent in regard to his principal's business, and if the receipt of such consideration would tend to influence him. "Corruptly" does not merely mean the doing of an act prohibited by the statute, but the doing of such an act with some wrongful intention. — *Rex v. Stevenson*, (1907) V. L. R. 475. It is for the jury to decide whether the giving of the valuable consideration would tend to influence the agent to show favour to the person giving it in relation to the principal's business. The fact that a secret commission has been given raises the presumption that it was given "corruptly". — *Rex v. Scott*, (1907) V. L. R. 471.

Secret gifts to parent, wife, child, partner, etc., of agent deemed gifts to agent. Secret gifts received by parent, wife, child, partner, etc., of agent deemed received by agent unless the contrary is proved. 3. 1. Any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk, or employé, or at the agent's request to any person, by any person having business relations with the principal of such agent shall be deemed to have been

¹⁾ The Acts referred to in the notes are (E.) the *Prevention of Corruptions Act, 1906*, (6 Edw. 7, c. 34), (C.) the Commonwealth *Secret Commissions Act, 1905*, (No. 10 of 1905) reprinted *supra*, and the Acts of the Australian States reprinted herein.

given or offered to the agent. 2. Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk or employé from any person having business relations with the principal of such agent shall be deemed to have been received or solicited by the agent, unless it be proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent. — T. 4; S. A. 3; W. A. 4.

Giving to agent or agent receiving, using, or giving to principal false or misleading receipt or account a misdemeanour. 4. If with intent to deceive or defraud the principal any person gives to any agent, or any agent receives or uses, or gives to the principal any receipt, invoice, account, or document in respect of which or in relation to a dealing transaction or matter in which the principal is interested and which: a) Contains any statement which he knows to be false, or erroneous, or defective in any important particular or is in any way likely to mislead the principal; or b) Omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed he shall be guilty of a misdemeanour. — E. § 1 (1); C. 5; T. 5; S. A. 6; W. A. 5; N. Z. 6.

Gift or receipt of secret commission in return for advice given. Offer or solicitation of secret commission in return for advice given or to be given. 5. 1. Whenever any advice is given by one person to another and such advice is in any way intended to induce or influence the person advised a) To enter into a contract with any third person; or b) To appoint or join with another in appointing, or to vote for, or to aid in obtaining the election or appointment, or to authorize or join with another in authorizing the appointment of any third person as trustee and any valuable consideration is given by such third person to the person giving the advice without the assent of the person advised, the gift or receipt of the valuable consideration shall be a misdemeanour, but this subsection shall not apply when the person giving the advice was to the knowledge of the person advised the agent of such third person, or when the valuable consideration was not given in respect of such advice. 2. Any offer or solicitation of a valuable consideration in respect of any advice given or to be given by one person to another with a view to induce or influence the person advised a) To enter into a contract with the person offering or solicited; or b) To appoint or join with another in appointing, or to vote for, or to aid in obtaining the election or appointment, or to authorize or join with another in authorizing the appointment of the person offering or solicited as trustee and with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised shall be a misdemeanour, but this subsection shall not apply when such first-mentioned person is the agent of the person offering or solicited. — T. 6, 7; S. A. 7, 8; W. A. 6, 7; N. Z. 8.

Secret commission to trustee in return for substituted appointment. 6. If any person offers or gives any valuable consideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself, or for any other person, without the assent of the persons beneficially entitled to the estate or of a Judge of the Supreme Court, as an inducement or reward for appointing or having appointed, or for joining or having joined with another in appointing, or for authorizing or having authorized, or for joining or having joined with another in authorizing any person to be appointed in his stead, or instead of him and any other person as trustee, he shall be guilty of a misdemeanour. — T. 8; S. A. 9; W. A. 8.

Aiding and abetting offences within or without Victoria. 7. Any person who being within Victoria knowingly aids, abets, counsels, or procures, or who attempts or takes part in or is in any way privy to a) Doing any act or thing in contravention of this Act; b) Doing any act or thing outside Victoria, or partly within and partly outside Victoria, which if done within Victoria would be in contravention of this Act shall be guilty of a misdemeanour. — C. 10; T. 9; S. A. 10; W. A. 9; N. Z. 9.

Liability of directors, etc., acting without authority. 8. Any director, manager, or officer of a company, or any person acting for another, who knowingly takes part in or is in any way privy to doing, or who attempts to do any act or thing without authority, which if authorised would be in contravention of any of the provisions of this Act, shall be guilty of a misdemeanour. — T. 10; S. A. 11; W. A. 10.

Penalty on conviction. 9. Any person on conviction of a misdemeanour under any of the provisions of this Act shall a) Be liable, if a corporation, to a penalty not exceeding five hundred pounds, and, if any other person, to be im-

prisoned for any period not exceeding two years, with or without hard labour, or to pay a penalty not exceeding five hundred pounds, or imprisonment and penalty as aforesaid; and b) In addition, be liable to be ordered to pay to such person and in such manner as the Court directs the amount or value according to the estimation of the Court of any valuable consideration received or given by him, or any part thereof, and such order shall be enforceable in the same manner as a judgment of the Court. — E. § 1 (1); C. 4 (1); T. 11; S. A. 12; W. A. 11; N. Z. 13.

Court may order withdrawal of trifling or technical cases. 10. Upon the trial of a person for any offence under this Act, if it appears to the Court that the offence charged is in the particular case of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the Court may, in its discretion, and for reasons stated, on the application of the accused, withdraw the case from the jury, and this shall have the same force and effect as if the jury had returned a verdict of not guilty, except that the Court may if it think fit make the order mentioned in the last preceding section. — E. § 2 (2); T. 12; W. A. 12.

Protection of witness giving answers criminating himself. 11. A person who is called as a witness in any proceedings shall not be excused from answering any question relating to any offence under this Act on the ground that the answer thereto may criminate or tend to criminate him: Provided that a) A witness who in the judgment of the Court or justices answers truly all questions which he is required by the Court or justices to answer shall be entitled to receive a certificate from the court or justices stating that such witness has so answered; and b) An answer by a person to a question put by or before the Court or justices in any proceeding under this Act shall not, except in the said proceeding, or in the case of any criminal proceedings for perjury in respect of such evidence, be in any proceeding, civil or criminal, admissible in evidence against him. — C. 8; T. 13; S. A. 14; W. A. 13; N. Z. 15.

Stay of proceedings against such witness. 12. When a person has received a certificate as aforesaid and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceeding in which the said person was called as a witness the Court or justices having cognizance of the case shall on proof of the certificate and of the identity of the offence in question in the two cases stay the proceedings. — T. 14; W. A. 14.

Custom of itself no defence. 13. In any prosecution under this Act it shall not amount to a defence to show that any such valuable consideration as is mentioned in this Act is customary in any trade or calling. — C. 9; T. 15; S. A. 16; W. A. 15; N. Z. 11.

Burden of proof that gift not secret commission. 14. For the purposes of this Act where it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this Act shall be on the accused. — T. 16; S. A. 17; W. A. 16.

Limit of time for prosecution. 15. No prosecution for an offence under this Act shall be commenced after the expiration of two years next after the commission of the offence, or six months next after the first discovery thereof by the principal or the person advised as the case may be, whichever expiration first happens. — T. 17; S. A. 18; W. A. 17.

Consent of Attorney-General to prosecution. 16. No prosecution for an offence under this Act shall be commenced without the consent of the Attorney-General. — E. § 2 (1); T. 8; S. A. 19; W. A. 18.

Prosecution of offences. 17. Every information for any offence under this Act shall be upon oath. — E. § 2 (3); C. 11; T. 19; S. A. 20; W. A. 19.

Interpretations. 18. In the construction of this Act the following provisions shall apply: 1. The word "agent" shall include any corporation or other person acting or having been acting, or desirous or intending to act, for or on behalf of any corporation or other person whether as agent, partner, co-owner, clerk, servant, employé, banker, broker, auctioneer, architect, clerk of works, engineer, barrister and solicitor, surveyor, buyer, salesman, foreman, trustee, executor, administrator, liquidator, trustee in an insolvency or in liquidation or of a deed of arrangement as defined in the Insolvency Acts, receiver, director, manager, or other

officer, or member of committee or governing body of any corporation, club, partnership, or association, or in any other capacity either alone or jointly with any other person, and whether in his own name or in the name of his principal or otherwise, and a person serving under the Crown is an agent within the meaning of this Act. 2. The word "principal" shall include a corporation or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act. 3. The word "trustee" shall include trustee, executor, administrator, liquidator, trustee in an insolvency or of a deed of arrangement as defined in the Insolvency Acts, receiver, director, committee of the estate under the Lunacy Acts, person having power to appoint a trustee, or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person. 4. The words "valuable consideration" shall include any money, loan, office, place, employment, agreement to give employment, benefit, or advantage whatsoever, and any commission or rebate, deduction or percentage, bonus or discount, or any forbearance to demand any money or money's worth or valuable thing, and the acceptance of any of the said things shall be deemed the receipt of a valuable consideration. 5. The words "valuable consideration" when used in connexion with the offer thereof shall include any offer of any agreement or promise to give and every holding out of any expectation of valuable consideration. 6. The words "valuable consideration" when used in connexion with the receipt thereof shall include any acceptance of any agreement, promise, or offer to give, and of any holding out of any expectation of valuable consideration. 7. The word "contract" shall include contract of sale or of employment or any other contract whatever. 8. Any act or thing prohibited by this Act is prohibited whether done directly or indirectly by the person mentioned or by or through any other person. 9. The words "solicit any valuable consideration" and "valuable consideration solicited" and words to the like effect shall be construed with the following direction, namely: That every agent who shall divert, obstruct, or interfere with the proper course of business or manufacture, or shall impede or obstruct, or shall fail to use due diligence in the prosecution of any negotiation or business with the intent to obtain the gift of any valuable consideration from any person interested in the said negotiation or business, or with intent to injure any such person, shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent. 10. The words "person having business relations with the principal" shall include every corporation or other person whether as principal or agent carrying on, or having carried on, or desirous or intending to carry on any negotiation or business with, or engaged or having been engaged, or desirous or intending to be engaged in the performance of any contract with, or in the execution of any work or business for, or in the supply of any goods or chattels to any principal, and shall also include any agent of such corporation or other person. 11. The words "in relation to his principal's affairs or business" shall imply the additional words "whether within the scope of his authority or course of his employment as agent or not"; and 12. The words "advice given" and words to the like effect shall include every report, certificate, statement, and suggestion intended to influence the person to whom the same may be made or given, and every influence exercised by one person over another. — E. § 1 (2, 3); C. 2, 3; T. 20; S. A. 2; W. A. 20; N. Z. 2.

2. Tasmania. 6 Edw. 7, No. 21. An Act for the prohibition of Secret Commissions (8th November, 1906).

1. 1. = V. § 1 (1), except: "1906" is substituted for "1905". 2. = V. § 1 (2), except: "seven" is substituted for "six".

2—3. = V. § 2, except: in the middle of the section "or" is substituted for "he shall be guilty of a misdemeanour".

4. = V. § 3.

5. = V. § 4, except: in (a) "which is false" is substituted for "which he knows to be false".

6. = V. § 5 (1) except: "in any way likely or intended" is substituted for "in any way intended," and "section" is substituted for "subsection".

7. = V. § 5 (2), except: "section" is substituted for "subsection".

8. = V. § 6.

9. = V. § 7, except: "Tasmania" is substituted for "Victoria" in all places where it occurs.

10—19. = V. § 8—17.

Interpretations. 20. In the construction of this Act the following provisions shall apply: 1. The word "agent" shall include any corporation or other person acting or having been acting, or desirous or intending to act for or on behalf of any corporation or other person whether as agent, partner, co-owner, clerk, servant, employé, banker, broker, auctioneer, architect, clerk of works, engineer, barrister, solicitor, surveyor, buyer, salesman, foreman, trustee, executor, administrator, liquidator, trustee in bankruptcy, or of a deed of arrangement, receiver, director, manager, or other officer or member of committee or governing body of any corporation, club, partnership or association, or in any other capacity, either alone or jointly with any other person, and whether in his own name or in the name of his principal or otherwise; and a person serving under the Crown is an agent within the meaning of this Act. 2. The word "principal" shall include a corporation or other person for or on behalf of whom the agent acts, has acted, or is desirous or intending to act. 3. The word "trustee" shall include trustee, executor, administrator, liquidator, trustee in bankruptcy, or of a deed of arrangement, receiver, director, committee of the estate of an insane person, having power to appoint a trustee, or person entitled to obtain probate of the will or letters of administration to the estate of a deceased person. 4—12. = V. § 18 (4—12). — E. § 1 (2, 3); C. 2, 3; V. 18; S. A. 2; W. A. 20; N. Z. 2.

3. South Australia. 1 Geo. 5, No. 1006. An Act relating to Secret Commissions and Rebates. (23d November, 1910).

Short title and commencement. 1. This Act may be cited as *The Secret Commissions Act, 1910*, and shall come into operation on a day to be fixed by Proclamation. — E. § 4; C. 1; V. 1; T. 1; W. A. 1; N. Z. 1.

Interpretation. 2. In the construction of this Act the following provisions shall apply, unless inconsistent with the context or other provisions of this Act: "Agent" includes any corporation or other person acting or having been acting or desirous or intending to act for or on behalf of any corporation or other person, whether in the capacity of agent, attorney, partner, co-owner, clerk, servant, employé, banker, broker, auctioneer, architect, clerk of works, engineer, barrister, solicitor, proctor, surveyor, buyer, salesman, foreman, trustee (as hereinafter defined), liquidator, receiver, director, or manager, or in any of such capacities, or as any other officer or as a member of any committee or governing body of any corporation, club, partnership, or association, or in any other capacity, either alone or jointly with any other person, and whether in his own name or in the name of his principal, or otherwise; and a person serving under the Crown is an agent within the meaning of this Act; "Contract" includes contract of sale or of employment and any other contract whatever; "Full knowledge" means knowledge of all material facts and circumstances; "Principal" includes a corporation, club, partnership, firm, or other person or persons for or on behalf of whom the agent acts, has acted, or is desirous or intending to act; "Trustee" includes trustee, executor, administrator, liquidator, trustee in insolvency or bankruptcy or under any composition or scheme of arrangement with creditors or any assignment for the benefit of creditors, receiver, director, guardian, committee or guardian of any lunatic or person of unsound mind or of his estate, and person entitled to obtain probate of the will or letters of administration to the estate of a deceased person; "Valuable consideration" includes any money, loan, office, place, employment, agreement to give employment, benefit, or advantage whatsoever, commission or rebate, deduction or percentage, bonus or discount; forbearance to demand any money or money's worth or valuable thing or to exercise any right or enforce any claim, property right or claim of money's value, subject matter of any such property right or claim; and the acceptance of any of the said matters or things shall be deemed the receipt of a valuable consid-

ration; The words "valuable consideration," when used in connection with the offer thereof, include any offer of any agreement or promise to give, and every holding out of any expectation of, valuable consideration; The words "valuable consideration," when used in connection with the receipt thereof, include any acceptance of any agreement, promise, or offer to give, and of any holding out of any expectation of, valuable consideration; The words "solicit any valuable consideration," and "valuable consideration solicited," and words to the like extent shall be construed with the following direction, namely, that every agent who diverts, obstructs, or interferes with the proper course of business or manufacture, or impedes or obstructs or fails to use due diligence in the prosecution of any negotiation or business, with the intent to obtain the gift of any valuable consideration from any person interested in the said negotiation or business, or with intent to obtain or retain for his own use any moneys or property for which in the ordinary course of his duty he ought to account to any such person, shall be deemed to have solicited a valuable consideration from a person having business relations with the principal of such agent; The words "person having business relations with the principal" include every corporation, club, partnership, firm, or other person or persons, whether as principal or agent, carrying on or having carried on or desirous or intending to carry on any negotiation or business with, or engaged or having been engaged or desirous or intending to be engaged in the performance of any contract with, or in the execution of any work or business for, or in the supply of any goods or chattels to, any principal, and also include any agent of such corporation or other person; The words "in relation to his principal's affairs or business" imply the additional words "whether within the scope of his authority or course of his employment as agent or not"; and the words "advice given" and words to the like effect include every report, certificate, statement, and suggestion, whether written or not, intended to influence the person to whom the same is made or given, and every influence exercised by one person over another. Provided that when in this section it is stated that any word or expression includes as in this section stated, such statement is not to be taken to curtail the meaning of such word or expression. Any act or thing prohibited by this Act is prohibited whether done directly or indirectly by the person mentioned or by or through any other person. — E. 1; C. 23; 2; V. 18; T. 20; W. A. 20; N. Z. 2.

Secret gifts to parent, wife, child, partner, etc., of agent deemed gifts to agent. Secret gifts received by parent, wife, child, partner, etc., of agent deemed received by agent. 3. 1. Any valuable consideration given or offered to any parent, husband, wife, or child of any agent, or to his partner, clerk, or employé, or at the agent's request to any person, by any person having business relations with the principal of such agent, shall be deemed to have been given or offered to the agent. 2. Any valuable consideration received or solicited by any parent, husband, wife, or child of any agent, or by his partner, clerk, or employé, from any person having business relations with the principal of such agent shall be deemed to have been received or solicited by the agent, unless it is proved that the valuable consideration was so received or solicited without the consent, knowledge, or privity of the agent. — V. 3; T. 4; W. A. 4.

Receipt or solicitation of secret commission by an agent a misdemeanour. 4. If any agent corruptly receives or solicits from any person, for himself or for any other person, any valuable consideration: a) As an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business which he ought in the ordinary course of his duty to do or have done or forbear or have foreborne from doing; or b) The receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business, he shall be guilty of a misdemeanour. — E. 1 (1); C. 2; V. 2; T. 2; W. A. 2; N. Z. 4.

Gift or offer of secret commission to an agent a misdemeanour. 5. If any person corruptly gives or offers to any agent any valuable consideration: a) As an inducement or reward for, or otherwise on account of, doing or forbearing to do or having done or forborne to do any act in relation to his principal's affairs or business; or b) The receipt or any expectation of which would in any way tend to influence him to show or to forbear to show favour or disfavour to any person in relation to his principal's affairs or business, he shall be guilty of a misdemeanour. — E. 1 (1); C. 2; V. 2; T. 3; W. A. 3; N. Z. 3.

Giving to agent false or misleading receipt or account a misdemeanour. 6. If, with intent to deceive or defraud the principal, any person gives to any agent, or any agent receives or uses or gives to the principal, any receipt, invoice, account, or document in respect of which, or in relation to a dealing transaction or matter in which, the principal is interested, and which: a) Contains any statement which is false or erroneous or defective in any important particular, or is in any way likely to mislead the principal; or b) Omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed or agreed to be made, given, or allowed, such person or agent shall be guilty of a misdemeanour. — E. 1 (1); C. 5; V. 4; T. 5; W. A. 5; N. Z. 6.

Gift or receipt of secret commission in return for advice given. 7. Whenever any advice is given by one person to another, and such advice is in any way likely or intended to induce or influence the person advised: a) To enter into a contract with any third person; or b) To appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of any third person as trustee; and any valuable consideration is given by such third person to the person giving the advice without the assent of the person advised, the gift or receipt of the valuable consideration shall be a misdemeanour, but this section shall not apply when the person giving the advice was, to the knowledge of the person advised, the agent of such third person, or when the valuable consideration was not given in respect of such advice. — V. 1 (1); T. 6; W. A. 6; N. Z. 8.

Offer or solicitation of secret commission in return for advice given. 8. Whenever any person offers to another person any valuable consideration in respect of any advice given or to be given by such other person to a third person, or whenever any person solicits from another person any valuable consideration in respect of any advice given or to be given by the person soliciting to a third person, such advice, in either case, being with a view to induce or influence the person advised or to be advised: a) To enter into a contract with the person offering or solicited, as the case may be; or b) To appoint or join with another in appointing, or to vote for or to aid in obtaining the election or appointment, or to authorise or join with another in authorising the appointment, of the person offering or solicited, as the case may be, as trustee; and such offer or solicitation is made with the intent that the gift or receipt of such valuable consideration is not to be made known to the person advised or to be advised, then in every such case the offer or solicitation shall be a misdemeanour: Provided that this section shall not apply when the person who gave or is to give the advice is the agent of the person offering or solicited, and is not the agent of the person advised or to be advised. — V. 5 (2); T. 7; W. A. 7.

Secret commission to trustee in return for substituted appointment. 9. If any person offers or gives any valuable consideration to a trustee, or if any trustee receives or solicits any valuable consideration for himself or for any other person, without the assent of the persons beneficially entitled to the estate or of a Judge of the Supreme Court, as an inducement or reward for appointing or having appointed or for joining or having joined with another in appointing, or for authorising or having authorised or for joining or having joined with another in authorising the appointment of, any person as trustee in his stead or in the stead of him and any other person, he shall be guilty of a misdemeanour. — V. 6; T. 8; W. A. 8.

Aiding and abetting offences within or outside South Australia. 10. Any person who, being within South Australia, aids, abets, counsels, procures, or attempts or takes part in or is in any way directly or indirectly knowingly concerned in or privy to the: a) Doing of any act or thing in contravention of this Act; b) Doing of any act or thing outside South Australia, or partly within and partly outside South Australia, which if done within South Australia would be in contravention of this Act, shall be guilty of a misdemeanour. — C. 10; V. 7; T. 9; W. A. 9; N. Z. 9.

Liability of directors, etc., acting without authority. 11. Any director, manager, or officer of a company, or any person acting for another, who knowingly takes part in or is in any way directly or indirectly concerned in or privy to doing, or who attempts to do, any act or thing without authority which, if authorised, would be in contravention of any of the provisions of this Act, shall be guilty of a misdemeanour. — V. 8; T. 10; W. A. 10.

Penalty on conviction. 12. Any person, on conviction of a misdemeanour under any of the provisions of this Act, shall: a) Be liable, if a corporation, to a penalty not exceeding two hundred and fifty pounds, and, if any other person, to a penalty not exceeding one hundred pounds; and b) In addition, be liable to be ordered to pay to such person, and in such manner as the Court directs, the amount or value, according to the estimation of the Court, of any valuable consideration received or given by him or any part thereof; and such order shall be enforceable in the same manner as a judgment of the Court. — E. (1) 1; C. 4 (1); V. 9; T. 11; W. A. 11; N. Z. 13.

Court may order withdrawal of trifling or technical cases. 13. Upon the trial of a person for any offence under this Act, if it appears to the Court that the offence charged is in the particular case of a trifling or merely technical nature, or that in the particular circumstances it is inexpedient to proceed to a conviction, the Court may in its discretion, and for reasons stated on the application of the accused, withdraw the case from the jury, and this shall have the same force and effect as if the jury had returned a verdict of not guilty, except that the Court may, if it thinks fit, make the order mentioned in the next preceding section. — E. § 2 (2); V. 10; T. 12; W. A. 12.

Protection of witness giving answers criminating himself. 14. A person who is called as a witness in any proceedings shall not be excused from answering any question relating to any offence under this Act in respect of the particular charge on which he is being examined on the ground that the answer thereto may criminate or tend to criminate him. Provided that: a) A witness who, in the judgment of the Court, answers truly all questions which he is required by the Court to answer, shall be entitled to receive a certificate from the Court stating that such witness has so answered; and b) An answer by a person to a question put by or before the Court in any proceedings under this Act shall not, except in the case of any criminal proceedings for perjury in respect of such evidence, be in any proceeding, civil or criminal, admissible in evidence against him. — C. 8; V. 11; T. 13; W. A. 13; N. Z. 15.

Stay of proceedings against such witness. 15. When a person has received a certificate as aforesaid, and any criminal proceeding is at any time instituted against him in respect of the offence which was in question in the proceedings in which the said person was called as a witness, the Court or Justices having cognizance of the case shall, on proof of the certificate and of the identity of the offence in question in the two cases, stay the proceeding. — V. 12; T. 14; W. A. 14.

Custom of itself no defence. 16. In any prosecution under this Act it shall not amount to a defence to show that any such valuable consideration as is mentioned in this Act is customary in any trade or calling. — C. 9; V. 13; T. 15; W. A. 15; N. Z. 11.

Burden of proof to be on accused that gift not secret commission. 17. For the purposes of this Act, where it is proved that any valuable consideration has been received or solicited by an agent from or given or offered to an agent by any person having business relations with the principal, without the assent of the principal, the burden of proving that such valuable consideration was not received, solicited, given, or offered in contravention of any of the provisions of this Act shall be on the accused. — V. 14; T. 16; W. A. 16.

Limit of time of prosecution. 18. No prosecution for an offence under this Act shall be commenced after the expiration of two years next after the commission of the offence, or of six months next after the first discovery thereof by the principal or the person advised, as the case may be, whichever expiration first happens. — V. 15; T. 17; W. A. 17.

Consent of Attorney-General to prosecution. 19. No prosecution for an offence under this Act shall be commenced without the consent of the Attorney-General. — E. § 2 (1); V. 16; T. 18; W. A. 18; N. Z. 12.

Prosecution for offences. 20. Every information for an offence under this Act shall be upon oath or affirmation. — E. § 2 (3); C. 11; V. 17; T. 19; W. A. 19; N. Z. 10.

4. Western Australia. No. 13 of 1905. An Act for the prohibition of Secret Commissions and Rebates (23d December, 1905).

Short title. 1. This Act may be cited as the *Secret Commissions Act, 1905*, and shall come into operation on the first day of April, One thousand nine hundred and six. — E. § 4; C. 1; V. 1; T. 1.

2—3. = V. § 2, except: in the middle of the section “or” is substituted for “he shall be guilty of a misdemeanour”.

4. = V. § 3.

5. = V. § 4, except: “or if any agent” is substituted for “or any agent”, and “statement which is false” is substituted for “statement which he knows to be false”.

6. = V. § 5 (1), except: “in any way likely or intended” is substituted for “in any way intended”, and “section” is substituted for “subsection”.

7. = V. § 5 (2), except: “section” is substituted for “subsection”.

8. = V. § 6.

9. = V. § 7, except: “Western Australia” is substituted for “Victoria” in all places where it occurs.

10. = V. § 8.

11. = V. § 9, except: “as judgment of the Court” is substituted for “as a judgment of the Court”.

12. = V. § 10.

13. = V. § 11, except: in (b) “in the said proceeding or” is omitted.

14—15. = V. § 12—13.

16. = V. § 14, except: “shown” is substituted for “proved”.

17—18. = V. § 15—16.

19. = V. § 17, except: “an” is substituted for “any”.

20. = T. § 20, except: in (1) “barrister” is omitted.

Bills of Lading Acts.¹⁾

1. New South Wales. No. 43 of 1902. An Act to consolidate enactments relating to Usury, Interest, and to Certain Instruments and Contracts (21st August, 1902).

Short title. 1. This Act may be cited as the *Usury, Bills of Lading, and Written Memoranda Act, 1902*. — V. 1; S. A. 4; Q. 69; N. Z. 1.

Repeal. 2. The enactments mentioned in the Schedule to this Act are, to the extent therein expressed, hereby repealed.

[§§ 3—4 do not relate to bills of lading.]

Rights under bills of lading to vest in consignee or indorsee. 5. Every consignee of goods named in a bill of lading, and every indorsee of a bill of lading, to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself. — E. § 1; V. 108; T. 1; S. A. 1; Q. 5; W. A. 1; N. Z. 13.

Not to affect right of stoppage in transitu, or claim for freight. 6. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or indorsee, by reason or in consequence of his being such consignee or indorsee, or of his receipt of the goods, by reason or in consequence of such consignment or indorsement. — E. § 2; V. 109; T. 2; S. A. 2; Q. 6; W. A. 1; N. Z. 14.

Bill of lading in hands of consignee, etc., conclusive evidence of the shipment as against master, etc. 7. Every bill of lading in the hands of a consignee or indorsee, for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the

¹⁾ The references in the notes are to (E.) the Bills of Lading Act, 18 & 19 Vic. c. 9, the Australian Acts herein reprinted, and to (N. Z.) *The New Zealand Mercantile Law Act, 1908, infra*.

master or other person signing the same, notwithstanding that such goods, or some part thereof, may not have been so shipped, unless such holder of the bill of lading has had actual notice, at the time of receiving the same, that the goods had not been in fact laden on board. — E. § 3; V. 110; T. 3; S. A. 3; Q. 7; W. A. 1; N. Z. 15, 16. — See also Commonwealth Act, No. 14 of 1904, relating to sea-carriage of goods, *supra*.

[§§ 8—12 do not relate to bills of lading.]

Schedule.¹⁾

Number of Act.	Title.	Extent of Repeal.
20 Vic. No. 13.	An Act to amend the law relating to Bills of Lading.	The whole.

2. Victoria. 45 Vic. No. 1103. An Act to consolidate the law relating to Instruments and Securities (10th July, 1890).

Short title, commencement, and division. 1. This Act may be cited as the *Instruments Act, 1890*, and shall come into operation on the first day of August, One thousand eight hundred and ninety, and is divided into Parts, Divisions, and Subdivisions as follows: (Here follows an analysis of the Act). — N. S. W. 1; S. A. 4; Q. 69; N. Z. 1.

Part II. Bills of Lading. (§§ 108—115.)

108. = N. S. W. § 5. — E. § 1; N. S. W. 1; T. 1; S. A. 1; Q. 5; W. A. 1; N. Z. 13. — A bill of lading is a symbol of property within the meaning of the *Factors Act*, 6 Geo., 4 c. 94. — *Levi v. Learmonth*, 1 W. & W. (L.) 283. When deposited as security for advances it does not require registration as a bill of sale. — *Federal Bank of Australia v. White*, 21 V. L. R. 451; 17 A. L. T. 189; 1 A. L. R. 145.

109. = N. S. W. § 6.

110. = N. S. W. § 7, except: “shall have had actual notice” is substituted for “has had actual notice”.

Signing untrue bills of lading a misdemeanour. 111. If any person sign any receipt, acknowledgment, or bill of lading which represents or purports to represent that the goods therein mentioned have been shipped in or upon or laden on board the ship or vessel therein named, unless such goods have in fact been so shipped or laden or unless they are at the port where the ship is loading, and are for the purpose of shipment at the absolute order and disposition of the master of such ship or vessel, he shall be guilty of a misdemeanour: Provided that the person so signing may in all proceedings, whether civil or criminal, exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part and by the fraud of the shipper, or of the holder, or of some person under whom the holder claims. — T. 3; N. Z. 16. — The plaintiff as indorsee of a bill of lading sued the shipowner for short weight in the goods delivered. The bills of lading were signed before the goods were received on board the ship. *Held*, that although there was an irregularity in so signing the bills, yet the jury, who returned a verdict for the defendant, had had the opportunity of hearing the evidence of mercantile men as to what ought to be the weight of goods of that description shipped and delivered in London, and the verdict should not be disturbed. — *Bank of Australasia v. Blyth*, 5 A. J. R. 166.

Dealing with untrue bills of lading a misdemeanour. 112. If any person deposit or assign, either by way of sale or of security, or otherwise deal with any receipt, acknowledgment, or bill of lading as aforesaid, knowing that such receipt, acknowledgment, or bill of lading has been signed contrary to the provisions of this Part of this Act, he shall be guilty of a misdemeanour.

Bill of lading not invalidated by improper signature. 113. The fact that any receipt, acknowledgment, or bill of lading has been signed contrary to the provisions of this Part of this Act shall not of itself invalidate any such receipt, acknowledgment, or bill of lading, or in any way affect the operation thereof.

¹⁾ In so far as it relates to bills of lading.

Punishment for misdemeanour. 114. Every misdemeanour under this Part of this Act shall be punishable by a fine not exceeding two hundred pounds, or by imprisonment for any term not exceeding two years.

Definition of port. 115. The word "port" in this Part of this Act shall include the city of Melbourne, Port Melbourne, and Williamstown, the towns of Geelong, Warrnambool, Port Fairy, and Portland, and places within ten miles from the post-office in the city of Melbourne and within three miles from the post-office in each of the towns aforesaid.

3. Tasmania. 20 Vic. No. 25. An Act to amend the law relating to Bills of Lading (5th June, 1857).

1. = N. S. W. § 5.

2. = N. S. W. § 6, except: "affect or prejudice" is substituted for "prejudice or affect".

3. = N. S. W. § 7, "shall have had actual notice" is substituted for "has had actual notice," and the following proviso is added at the end of the section: Provided that the Master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

4. South Australia. 22 & 23 Vic. No. 25. An Act to amend the law relating to Bills of Lading (1st September, 1859).

1—2. = N. S. W. § 5—6.

3. = N. S. W. § 7, except: "shall have had actual notice" is substituted for "has had actual notice".

Short title. 4. This Act may be cited as *The Bills of Lading Act, 1859*. — N. S. W. 1; V. 1; Q. 69; N. Z. 1.

Commencement of Act. 5. This Act shall take effect from the passing thereof.

5. Queensland. 31 Vic. No. 36. An Act to consolidate and amend the laws relating to Mercantile Matters (28th December, 1867).

[§§ 1—4 do not relate to bills of lading.]

Rights under bills of lading to vest in consignee or indorsee. 5. Whereas by the custom of merchants a bill of lading of goods being transferable by indorsement the property in the goods may thereby pass to the indorsee but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner and it is expedient that such rights should pass with the property. And whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board and it is proper that such bills of lading in the hands of a *bonâ fide* holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden as aforesaid. Now therefore be it enacted that etc. (the remainder of the section = N. S. W. § 5.) — E. § 1; N. S. W. 5; V. 108; T. 1; S. A. 1; W. A. 1; N. Z. 13.

6. = N. S. W. § 6.

7. = N. S. W. § 7, except: "shall have had actual notice" is substituted for "has had actual notice".

[§§ 8—68 do not relate to bills of lading.]

Commencement of Act. Short title. 69. This Act shall commence on the thirty-first day of December, One thousand eight hundred and sixty-seven, and may be referred to as *The Mercantile Act of 1867*.

6. Western Australia. a) 20 Vic. No. 7. An Ordinance for adopting and applying an Act of Parliament intituled "An Act to amend the law relating to Bills of Lading" in the Administration of Justice in the Colony of Western Australia (16th October, 1856).

(This Act adopts by reference 18 & 19 Vic. c. 9.)

b) No. 26 of 1909. An Act relating to the Sea-Carriage of Goods (29th October, 1909).¹⁾

Short title. 1. This Act may be cited as the *Sea-Carriage of Goods Act, 1909*. — C. 1.

Commencement of Act. 2. This Act shall commence on the first day of January, one thousand nine hundred and ten. — C. 2.

Definition. 3. In this Act, "goods" includes every description of wares, merchandise, and things, except live animals. — C. 3.

Application of Act. 4. 1. This Act shall apply only in relation to ships carrying goods from any place in Western Australia to some other place in Western Australia, and in relation to goods so carried, or received to be so carried, in those ships. 2. This Act shall not apply to any bill of lading or document made before the thirty-first day of March, one thousand nine hundred and ten, in pursuance of a contract of agreement entered into before the first day of September, one thousand nine hundred and nine. — C. 4.

Certain clauses prohibited in bills of lading. 5. Where any bill of lading or document contains any clause, covenant, or agreement whereby: a) The owner, charterer, master, or agent of any ship, or the ship itself, is relieved from liability for loss or damage to goods arising from the harmful or improper condition of the ship's hold, or any other part of the ship in which goods are carried, or arising from negligence, fault, or failure in the proper loading, stowage, custody, care, or delivery of goods received by them or any of them to be carried in or by the ship; or b) Any obligations of the owner or charterer of any ship to exercise due diligence, and to properly man, equip, and supply the ship, to make and keep the ship seaworthy, and to make and keep the ship's hold, refrigerating, and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation, are in any wise lessened, weakened, or avoided; or c) The obligations of the master, officers, agents, or servants of any ship to carefully handle and stow goods, and to care for, preserve, and properly deliver them, are in any wise lessened, weakened, or avoided, that clause, covenant or agreement shall be illegal, null and void, and of no effect. — C. 5.

Penalties. 6. Any owner, charterer, master, or agent of a ship who: a) Inserts in any bill of lading or document any clause, covenant, or agreement declared by this Act illegal; or b) Makes, signs, or executes any bill of lading or document containing any clause, covenant, or agreement declared by this Act to be illegal, shall be guilty of an offence, and liable, on summary conviction, to a penalty of not exceeding one hundred pounds. — C. 7.

Implied clauses in bills of lading. 7. 1. In every bill of lading with respect to goods a warranty shall be implied that the ship shall be, at the beginning of the voyage, seaworthy in all respects and properly manned, equipped, and supplied. 2. In every bill of lading with respect to goods, unless the contrary intention appears, a clause shall be implied whereby, if the ship is at the beginning of the voyage seaworthy in all respects and properly manned, equipped, and supplied, neither the ship nor her owner, master, agent, or charterer shall be responsible for damage to or loss of the goods resulting from: a) Faults or errors in navigation, or b) Perils of the sea or navigable waters, or c) Acts of God or the King's enemies, or d) The inherent defect, quality, or vice of goods, or e) The insufficiency of package of the goods, or f) The seizure of goods under legal process, or g) Any act of omission of the shipper or owner of the goods, his agent or representative, or h) Saving or attempting to save life or property at sea, or i) Any deviation in saving or attempting to save life or property at sea.

¹⁾ The references (C.) in the notes are to the Commonwealth *Sea-Carriage of Goods Act, 1904*, reprinted *supra*.

Bank Holidays Acts.¹⁾

1. New South Wales. a) No. 9 of 1898. An Act to consolidate the laws relating to Banks and Bank Holidays (27th July, 1898).

Part I. Preliminary.

Short title and division. 1. This Act may be cited as the *Banks and Bank Holidays Act, 1898*, and is divided into parts and divisions, as follows: Part I. *Preliminary* (§ 1, 2, 3). Part II. *Publication of statements and registration*. Division 1. *Publication of statements* (§ 4—6). Division 2. *Registration* (§ 7—10). Division 3. *Miscellaneous provisions* (§ 11—13). Part III. *Bank holidays* (§ 14—18).

Repeal of Acts. First Schedule. 2. The Acts mentioned in the first Schedule to this Act are to the extent therein expressed hereby repealed.

[§§ 3—13 to not relate to bank holidays.]

Part III. Bank Holidays.

[§§ 14—16 are repealed.]

Appointment of special bank holidays. 17. It shall be lawful for the Governor by proclamation in the Gazette to appoint a special day to be observed as a public holiday, either throughout New South Wales, or in any part thereof, or in any city, town, borough, or district therein; and any day so appointed shall be kept as a close holiday in all banks within the locality mentioned in such proclamation. — E. 34 & 35 Vic. c. 17, § 4; V. a. (No. 1164) 20; T. 8; S. A. a. (37 Vic. No. 19) 4; Q. a. (4 Edw. 7, No. 8) 5; W. A. a. (48 Vic. No. 9) 5. — This section is modified by d. (No. 15 of 1906) § 2, *infra*.

Day appointed for bank holiday may be vetoed by proclamation. 18. It shall be lawful for the Governor, when it is made to appear to him in any special case that in any year it is inexpedient that a day by this Act appointed for a bank holiday should be a bank holiday, to declare by proclamation in the Gazette, published not less than one week before the day appointed for such holiday, that such day shall not in such year be a bank holiday, and to appoint such other day as to the Governor may seem fit to be a bank holiday instead of such day, and thereupon the day so appointed shall in such year be substituted for the day so appointed by this Act. — E. 34 & 35 Vic. c. 17, § 5; V. a. (No. 1164) 21; T. 10; S. A. a. (37 Vic. No. 19) 5; Q. a. (4 Edw. 7, No. 8) 6; W. A. a. (48 Vic. No. 9) 6.

Schedules.

First Schedule.²⁾

Reference to Act.	Title or Short title.	Extent of Repeal.
39 Vict. No. 2.	An Act to make provision for Bank Holidays, and respecting obligations to make payments and do other acts on such Holidays.	The whole.

(The second and third schedules do not relate to bank holidays.)

Fourth Schedule.

The first day of January.	The first day of August.
The twenty-sixth day of January.	The anniversary of the birthday of the Prince of Wales.
Good Friday.	Christmas Day.
The day after Good Friday.	The twenty-sixth day of December.
Easter Monday.	
The anniversary of the birthday of Her Majesty or her successor.	

When any of the above days falls upon a Sunday, the next following Monday shall be a bank holiday, and whenever the twenty-sixth day of December falls upon a Monday, the day following shall be a bank holiday.

¹⁾ The Acts referred to in the notes are those of (E.) England, as indicated, and the Acts relating to bank holidays of the Australian states and of New Zealand herein reprinted. The repeals effected by the adoption of the Commonwealth *Bills of Exchange Act, 1909*, are noted. — ²⁾ In so far as it relates to bank holidays.

b) No. 30 of 1899. An Act to fix certain Public Holidays on Mondays (1st December, 1899).

When certain days declared to be Bank Holidays do not fall on a Monday the following Monday to be a Bank Holiday instead. 1. (As amended by d. [No. 15 of 1906] § 3, *infra*.) When any of the following days, that is to say, the anniversary of the birthday of Her Majesty or Her successor, the first day of August, or the anniversary of the birthday of the Prince of Wales, falls on any day of the week other than Monday, that day shall not be a bank holiday, but the following Monday shall be a bank holiday in lieu thereof unless otherwise proclaimed by notice in the Government Gazette; and the fourth Schedule to the *Banks and Bank Holidays Act, 1898*, is hereby amended accordingly. — V. c. (No. 1661) 2—4; T. 4 (2); S. A. c. (No. 571) 3; Q. a. (4 Edw. 7, No. 8) Schedule; W. A. c. (63 Vic. No. 40) 5.

Short title. 2. This Act may be cited as the *Banks and Bank Holidays Act Amendment Act, 1899*.

c) No. 80 of 1900. An Act to enable Bank and Branch Banks to be closed on certain Afternoons; to provide that such Afternoons shall not be Banking or Business Hours for the purpose of any Business at such Banks and Branches; and to amend the Bills of Exchange Act, 1887 (11th December, 1900).

Short title. 1. This Act may be cited as the *Banks Half-Holiday Act, 1900*.

Banks and branches may be closed on certain afternoons. Effect of such closing. 2. Any bank, on obtaining the permission in writing of the Colonial Treasurer, and on giving the public notice hereinafter mentioned, may close the bank, or any branch of the bank, to business on any day after noon. Public notice of such closing shall be given by the bank by advertisement published between the third and the fourteenth day before the day of such closing in at least two issues of some newspaper published and circulating in the neighbourhood of any bank or branch proposed to be so closed. — Q. a. (4 Edw. 7, No. 8) 10; N. Z. 24.

d) No. 15 of 1906. An Act to provide for the Interpretation of Certain Agreements in so far as they refer to Public or Bank Holidays; to amend the Banks and Bank Holidays Act, 1898, and the Banks and Bank Holidays Act Amendment Act, 1899; and for Other Purposes Incidental Thereto (16th October, 1906).

Short title. 1. This Act shall be construed with the *Banks and Bank Holidays Act, 1898*, and the *Banks and Bank Holidays Act Amendment Act, 1899*, and may be cited as the *Banks and Bank Holidays Further Amendment Act, 1906*.

Notice to be given of special public holidays. 2. The proclamation in the *Gazette* referred to in section seventeen of the *Banks and Bank Holidays Act, 1898*, appointing a special day to be observed as a public holiday, shall be published at least seven days before the date of the public holiday so appointed.

[§ 3 amends b. (No. 30 of 1899) § 1, *supra*, and is there incorporated.]

Interpretation of references in certain agreements to public holidays. 4. When in any industrial agreement, or in any agreement relating to work, made either before or after the commencement of this Act, reference is made to a public or bank holiday, such reference shall be deemed to relate to the day on which such holiday is publicly observed.

2. Victoria. a) 54 Vic. No. 1164. An Act to consolidate the laws relating to Banks and the Currency (8th December, 1890).

Short title, commencement, and division. 1. This Act may be cited as the *Banks and Currency Act, 1890*, and shall come into operation on the first day of August, one thousand eight hundred and ninety, and is divided into Parts and

Divisions as follows: Part I. *Supervision of banking companies* (§ 4—11). Part II. *Note issue*. Division 1. *Regulation of note issue* (§ 12—14). Division 2. *Taxation of bank notes* (§ 15, 16). Part III. *Bank holidays* (§ 17—23). Part IV. *Miscellaneous* (§ 24—29).

Repeal. First Schedule. 2. The Acts mentioned in the first Schedule to this Act, to the extent to which the same are thereby expressed to be repealed, are hereby repealed: Provided that such repeal shall not affect any registration effected or any proclamation made under the said Acts, or any of them, before the commencement of this Act.

[§§ 3—16 do not relate to bank holidays.]

Part III. Bank Holidays.

Bills due on bank holiday to be payable on the following day. 17. After the passing of this Act the several days in the fourth Schedule to this Act mentioned (and which days are in this Part of this Act hereinafter referred to as bank holidays) shall be kept as close holidays. — E. 34 & 35 Vic. c. 17, § 1; N. S. W. a. (No. 9 of 1898) 14; T. 4, 5; S. A. a. (37 Vic. No. 19) 1; Q. a. (4 Edw. 7, No. 8) 4, 7; W. A. a. (48 Vic. No. 9) 1; N. Z. 23.

[§§ 18—19 are repealed.]

Appointment of special bank holidays by proclamation of the Governor. 20. The Governor may from time to time as he may think fit by proclamation appoint a special day to be observed as a bank holiday either throughout Victoria or in any part thereof or in any city, town, borough, shire, or district therein, and any day so appointed shall be kept as a close holiday in all banks within the locality mentioned in such proclamation, and shall as regards bills of exchange and promissory notes payable in such locality be deemed to be a bank holiday for all the purposes of this Part of this Act. — E. 34 & 35 Vic. c. 17, § 4; N. S. W. a. (No. 9 of 1898) 17; T. 8; S. A. a. (37 Vic. No. 19) 4; Q. a. (4 Edw. 7, No. 8) 5; W. A. a. (48 Vic. No. 9) 5.

Day appointed for bank holiday may be altered by Order in Council. 21. The Governor, when it is made to appear to the Governor in Council in any special case that in any year it is expedient that a day by this Part of this Act appointed for a bank holiday should not be a bank holiday, may declare by proclamation in the *Government Gazette*, published not less than one week from the day appointed for such holiday, that such day shall not in such year be a bank holiday, and may appoint such other day as to the Governor in Council may seem fit to be a bank holiday, and thereupon the day so appointed shall in such year be substituted for the day appointed by this Part of this Act. — E. 34 & 35 Vic. c. 17, § 5; N. S. W. a. (No. 9 of 1898) 18; T. 10; S. A. a. (37 Vic. No. 19) 5; Q. a. (4 Edw. 7, No. 8) 6; W. A. a. (48 Vic. No. 9) 6.

Courts to take judicial notice of the anniversary of the Queens birthday. 22. All courts judges and persons acting judicially shall take judicial notice of the anniversary of the birthday of Her Majesty and of every her successor. — T. 11; S. A. a. (37 Vic. No. 19) 6.

Schedules.

First Schedule.¹⁾

Date of Act.	Title of Act.	Extent of Repeal.
37 Vic. No. 458.	Bank Holidays Act, 1873.	The whole.

Fourth Schedule.²⁾

Good Friday.	Easter Monday.
The day after Good Friday.	Whit Monday,
and the following days when week days:	
The first day of January.	The first Thursday in September.
The birthday of Her Majesty or her successor for the time being.	The twenty-fifth day of December.
The twenty-sixth day of January, the twenty-first day of April.	The twenty-sixth day of December.

When any of the days last above-mentioned fall upon a Sunday, the next following Monday shall be a bank holiday.

¹⁾ In so far as it relates to bank holidays. — ²⁾ As amended by b. (No. 1534) § 3, and d. (No. 2319) § 2, *infra*.

b) 61 Vic. No. 1534. An Act relating to certain Public and Bank Holidays (21st December, 1897).

Short title. 1. This Act may be cited as the *Public and Bank Holidays Act, 1897*.

[§ 2 relates to the Public Service.]

[§ 3 amends a. (No. 1164) fourth Schedule, and is there incorporated.]

Bank half-holidays may be proclaimed. 4. The Governor may from time to time as he may think fit by proclamation appoint any part of any specified day to be observed as a bank half-holiday either throughout Victoria or any part thereof or in any city, town, borough, or shire therein, and any half-holiday so appointed shall during such hours as are specified in such proclamation be kept as a close holiday in all banks within the locality mentioned in such proclamation. — T. 8, 9. Cp. Notes to N. S. W. c. (No. 80 of 1900) § 2.

c) 64 Vic. No. 1661. An Act relating to the observance of certain Public and Bank Holidays (29th August, 1900).

Short title. 1. This Act may be cited as the *Public and Bank Holidays Act, 1900*.

Certain holidays to be observed on Mondays only. 2. Whenever pursuant to any Act any holiday to which this Act applies would fall on any day other than a Monday, then the following Monday shall be observed as a public holiday and bank holiday instead of such day, and the provision of any Acts relating to public holidays or bank holidays shall be deemed and taken to apply to such Monday. — N. S. W. b. (No. 30 of 1899) 1; T. 4 (2); S. A. c. (No. 571) 3; Q. a. (4 Edw. 7, No. 8) Schedule; W. A. c. (63 Vic. No. 40) 5.

Holidays to which Act applies. 3. [As amended by d. (No. 2319) § 3.] This Act shall apply to the following holidays in each and every year, namely: the anniversary of the birthday of Her Majesty or her successor for the time being.

Power to proclaim additional holidays. 4. The Governor in Council may by Order published in the *Government Gazette* proclaim that there shall be added to the holidays to which this Act applies the twenty-sixth day of January and the twenty-first day of April or either of them, and thereafter subject to this Act the said day or days shall in each and every year be observed as a public holiday and bank holiday.

d) 2 Geo. 5, No. 2319. An Act relating to a certain Public and Bank Holiday (22d September, 1911).

Short title. 1. This Act may be cited as the *Prince of Wales' Birthday Holiday Abolition Act, 1911*.

[§ 2 amends a. (No. 1164) Sched. 4, and is there incorporated.]

[§ 3 amends c. (No. 1661) § 3, and is there incorporated.]

3. Tasmania. a) 3 Edw. 7, No. 4. An Act to provide for constituting certain Days Bank Holidays (16th October, 1903).

Short title. 1. This Act may be cited as *The Bank Holidays Act, 1903*.

Interpretation. 2. In this Act "Chief Secretary" shall include the responsible Minister of the Crown administering this Act.

Repeal. 3. 1. The Act mentioned in the Schedule hereto is to the extent therein mentioned hereby repealed. 2. Where in any existing Act any Act hereby repealed may be referred to, such reference shall, for the purposes of any such existing Act, be deemed to be to this Act.

Certain days to be bank holidays. 4. [As amended by 1 Geo. 5, No. 35, § 2.] 1. On and after the passing of this Act, the following days shall be bank holidays for the purposes of this Act, that is to say: The first day of January; the twenty-sixth day of January; Good Friday; the day after Good Friday; Easter Monday and Easter Tuesday; the birthday of His Majesty or his successor for the time being; the second Monday in November; Christmas Day; the twenty-sixth day

of December. 2. Whenever the twenty-sixth day of January, or the birthday of His Majesty or his successor for the time being, would fall on any day other than a Monday, the following Monday shall be a bank holiday instead of such day. 3. Whenever Christmas Day falls on a Sunday, then the next two days, namely the twenty-sixth and twenty-seventh days of December, shall be bank holidays, and whenever any other day in the above Schedules falls on a Sunday, the next following Monday shall be a bank holiday. — See notes to § 5, *infra*, and to N. S. W. b. (No. 30 of 1899) § 1, *supra*.

Bank holidays to be close holidays. 5. All bank holidays shall be kept as close holidays. — E. 34 & 35 Vic. c. 17, § 1; N. S. W. a. (No. 9 of 1898) 14; V. a. (No. 1164) 17; S. A. a. (37 Vic. No. 19) 1; Q. a. (4 Edw. 7, No. 8) 7; W. A. a. (48 Vic. No. 9) 1; N. Z. 23.

[§§ 6—7 are repealed.]

Appointment of special bank holidays. 8. 1. The Governor may from time to time, as he may think fit, appoint a special day or part thereof to be observed as a bank holiday or half holiday, either throughout Tasmania or in any part thereof, or in any city, town, or district, therein; and any day or part thereof so appointed shall be kept as a close holiday or half holiday in all banks within the locality mentioned in such notice. 2. The Chief Secretary shall cause a notification that such day or part thereof has been appointed a bank holiday to be published in the *Hobart Gazette*, and in such one or more public newspapers as the Chief Secretary may deem advisable. — E. 34 & 35 Vic. c. 17, § 4; N. S. W. a. (No. 9 of 1898) 17; V. a. (No. 1164) 20; S. A. a. (37 Vic. No. 19) 4; Q. a. (4 Edw. 7, No. 8) 5; W. A. a. (48 Vic. No. 9) 5. — See also notes to N. S. W. c. (No. 80 of 1900) § 2.

[§ 9 is repealed.]

Day appointed for bank holiday may be altered by the Governor. 10. 1. The Governor may declare that any day appointed for a bank holiday in any year by this Act shall not be a bank holiday for that year, and may appoint another day to be a bank holiday instead, and the day so appointed shall be a bank holiday accordingly. The powers conferred by this subsection may be exercised either with reference to the whole of Tasmania or any part thereof. 2. The Chief Secretary shall cause a notification that the day so appointed by the Governor has been substituted for the day appointed by this Act, to be published in the *Hobart Gazette* and in such one or more public newspapers as the Chief Secretary may deem advisable. — E. 34 & 35 Vic. c. 17, § 5; N. S. W. a. (No. 9 of 1898) 18; V. a. (No. 1164) 21; S. A. a. (37 Vic. No. 19) 5; Q. a. (4 Edw. 7, No. 8) 6; W. A. a. (48 Vic. No. 9) 6.

Sovereign's birthday to be judicially noticed. 11. All Courts, Judges, and persons acting judicially shall take judicial notice of the anniversary of the birthday of His Majesty and of every successor of His Majesty. — V. a. (No. 1164) 22; S. A. a. (37 Vic. No. 19) 6.

Schedule.

Act to be Repealed.

Date and Number of Act.	Title of Act.	Extent of Repeal.
48 Vic. No. 9.	The Bank Holidays Act, 1884.	The whole Act.

b) 1 Geo. 5 No. 35. An Act to amend the Bank Holidays Act, 1903 (20th December, 1910).

Short title. Incorporation. 1. This Act may be cited as *the Bank Holidays Act, 1910*, and shall be construed as one with *the Bank Holidays Act, 1903*, in this Act referred to as the Principal Act.

[§ 2 amends a) 3 Edw. 7, No. 4, § 4, and is there incorporated.]

4. South Australia. 1 Geo. 5, No. 1010. An Act to consolidate and amend the laws constituting Public Holidays and Bank Holidays, and for other Purposes (30th November, 1910).

Short title. 1. This Act may be cited as *The Holidays Act, 1910*.

Repeal. 2. The enactments mentioned in the first Schedule are hereby repealed to the extent stated in such Schedule.

Days fixed as holidays. 3. After the passing of this Act the several days mentioned in the second Schedule shall be public holidays and bank holidays: Provided that: 1. When any of the several days mentioned in Part II of the second Schedule falls upon a Saturday or Sunday; or II. When any of the several days mentioned in Part III. of the second Schedule falls upon any day other than a Monday, then the following Monday shall be a public holiday and bank holiday in lieu of such day.

— See note to T. a. (3 Edw. 7, No. 4) § 4.

Special holidays may be proclaimed. 4. The Governor may, from time to time, as he may think fit, by Proclamation published in the *Government Gazette*, appoint a special day to be a public holiday or bank holiday in any year either: a) Throughout the said State, or b) Within such district or locality as is specified in such Proclamation; and such day shall in such year be a public holiday or bank holiday accordingly. — See note to N. S. W. a. (No. 9 of 1898) § 17.

Governor may substitute another day in lieu of day appointed. 5. The Governor may, from time to time, as he may see fit, by Proclamation published in the *Government Gazette*, declare some other day to be a public holiday or bank holiday in any year in lieu of a day by this Act appointed a public holiday or bank holiday, and in that case such other day shall in such year be substituted as a public holiday or bank holiday for the said day appointed by this Act. — See note to N. S. W. a. (No. 9 of 1898) § 18.

Public offices and banks to be closed on holidays. 6. All offices of the Public Service of the said State shall be closed on public holidays, and all banks shall be closed on bank holidays: Provided that nothing in this Act shall: a) Authorise the closing on any public holiday of any office of the said Service which is specially required by law to be kept open on such public holiday; or b) Prevent the responsible Minister in charge of a Government department from requiring the services of any or all of the officers of such department during any public holiday in case of emergency.

Payments and other acts on holidays. 7. 1. No person shall be compellable to make any payment or do any act upon any public holiday or bank holiday which he would not be compellable to make or do on Sunday. 2. When, except for the provisions of this section, any person would be obliged to make any payment or do any act upon a public holiday or bank holiday, the obligation shall apply to the next day following which is not a public holiday or bank holiday, and payment or performance on such following day shall be due payment of the money or performance of the act: Provided that nothing in this Act shall exempt any person from making any payment or doing any act on any public holiday or bank holiday which he is by law specially required to make or do on such day.

Schedules.

The first Schedule.

Enactments Repealed.

Enactments Repealed.	Title.	Extent of Repeal.
No. 19 of 1873	"Bank Holidays Act, 1873"	The whole.
No. 3 of 1874	"Civil Service Act, 1874"	Section 31.
No. 571 of 1893	"The Bank Holidays Amendment Act, 1883"	The whole.
No. 976 of 1907	"The Holidays Act, 1909"	The whole.

*The second Schedule.***Holidays.***Part I.*

Sunday.
 Christmas Day.
 Good Friday.
 The day after Good Friday.
 Easter Monday.
 The Second Wednesday in October.

Part II.

The first day of January.
 The twenty-eighth day of December.

Part III.

The Anniversary of the Birthday of His Majesty or of any of His successors.
 The Anniversary of the Accession of His Majesty or of any of His successors.
 The Anniversary of the Birthday of the Heir Apparent.
 The twenty-sixth day of January.

5. Queensland. a) 4 Edw. 7, No. 8. An Act to make provision for Bank Holidays and respecting Obligations to make Payments and do other Acts on such Holidays (22d November, 1904).

Short title and commencement. 1. This Act may be cited as *The Bank Holidays Act of 1904*, and shall commence and take effect on and from the first day of January, One thousand nine hundred and five.

Repeal of 41 Vic. No. 13. 2. *The Bank Holidays Act of 1877* is repealed.

Interpretation. 3. In this Act: The expression "bank holiday" means a bank holiday constituted by or in pursuance of this Act. The expression "the day next following" means the day next following a bank holiday (not being itself a bank holiday) on which a bill of exchange or promissory note may be lawfully noted or protested, or on which any obligation to make any payment or to do any act relating to banking transactions may be enforced.

Bank holidays. Schedule. 4. The several days mentioned in the Schedule to this Act shall be kept as close holidays in all banks in the State of Queensland. — E. 34 & 35 Vic. c. 17, § 1; N. S. W. a. (No. 9 of 1898) 14; V. a. (No. 1164) 17; T. 4; S. A. a. (37 Vic. No. 19) 1; W. A. a. (48 Vic. No. 9) 1; N. Z. 22.

Special bank holidays. 5. (As amended by b. (6 Edw. 7, No. 12) § 2, *infra*.) The Home Secretary may from time to time by notification in the *Gazette* appoint a special day or the afternoon of such day to be observed as a public holiday or part public holiday either throughout Queensland or in any part thereof or in any city, town, or district therein, and may in like manner cancel any such appointment. Any day or afternoon of a day so appointed shall be kept as a close holiday in such banks within the locality mentioned in such notification, and shall be deemed to be a bank holiday for all the purposes of this Act. — E. 34 & 35 Vic. c. 17, § 4; N. S. W. a. (No. 9 of 1898) 17; V. a. (No. 1164) 20; T. 8; S. A. a. (37 Vic. No. 19) 4; W. A. a. (48 Vic. No. 9) 5.

Day appointed for bank holiday may be altered. 6. (As amended by b. (6 Edw. 7, No. 12) § 3, *infra*.) The Home Secretary, from time to time, when it is made to appear to him in any special case that it is inexpedient that a day by this Act appointed for a bank holiday should be a bank holiday, may declare, by notification in the *Gazette* published not less than one week before the day appointed for such holiday, that such day shall not be a bank holiday, and may appoint such other day as to him may seem fit to be a bank holiday instead of such day. Thereupon the day so appointed shall be substituted for the day appointed by this Act. The powers vested in the Home Secretary by this section may be exercised so as to take effect either generally, or for any limited period, or for any year, and may be limited to any specified city, town, district, or locality within the State. — E. 34 & 35 Vic. c. 17, § 5; N. S. W. a. (No. 9 of 1898) 18; V. a. (No. 1164) 21; T. 10; S. A. a. (37 Vic. No. 19) 5; W. A. a. (48 Vic. No. 9) 6.

[§§ 7—9 are repealed.]

Banks and branches may be closed on certain afternoons. Effect of such closing.

10. Any bank, on giving the public notice hereinafter mentioned, may close the bank, or any branch of the bank, to business on any day in the afternoon. Public notice of such closing shall be given by the bank by advertisement published between the third and the fourteenth day before the day of such closing in at least one issue of some newspaper published or circulating in the neighbourhood of any bank or branch proposed to be so closed: Provided that a) In all cases where it is proposed to close such bank or branch during the afternoon of one specified day in every week until further notice, it shall be sufficient to give public notice of such closing by advertisement, published as aforesaid, in one issue of such newspaper; b) In all cases where any branch has heretofore been closed during the afternoon of Saturday in every week, such closing may be continued without any permission or notice whatsoever. — N. S. W. c. (No. 80 of 1900) 2; N. Z. 24.

Schedule.¹⁾

The first day of January.
The twenty-sixth day of January.
The seventeenth day of March.
Good Friday.
The day after Good Friday.
Easter Monday.
The first day of May.

The twenty-fourth day of May.
The first day of August.
The second Monday in September.
The birthday of His Majesty or His Successor
The tenth day of December.
Christmas Day.
The twenty-sixth day of December.

When any of the above days falls upon a Sunday, the next following Monday shall be a bank holiday; and whenever the twenty-sixth day of December falls upon a Monday, the day following shall be a bank holiday.

When any of the following days, that is to say, the twenty-sixth day of January, the first day of May, the first day of August, the birthday of His Majesty or His Successor, or the tenth day of December, falls on any day of the week other than Monday, that day shall not be a bank holiday, but the following Monday shall be a bank holiday in lieu thereof, unless otherwise notified by the Home Secretary in the *Gazette*.

b) 6 Edw. 7, No. 12. An Act to amend The Bank Holidays Act of 1904 (13th November, 1906).

Short title and construction of Act. 1. This Act may be cited as *The Bank Holidays Act Amendment Act of 1906*, and shall be read as one with *The Bank Holidays Act of 1904*, hereinafter called the principal Act. This Act and the principal Act may together be cited as *The Bank Holidays Act, 1904—1906*.

[§ 2 amends a. (4 Edw. 7, No. 8) § 5, *supra*, and is there incorporated.]

[§ 3 amends a. (4 Edw. 7, No. 8) § 6, *supra*, and is there incorporated.]

[§ 4 amends a. (4 Edw. 7, No. 8) Schedule, *supra*, and is there incorporated.]

6. Western Australia. a) 48 Vic. No. 9. An Act to make provision for Bank Holidays, and respecting Obligations to Make Payments and do other Acts on such Bank Holidays (27th August, 1884).

1. = V. a. (No. 1164) § 17, except: "fourth" is omitted before "Schedule"; "this Part of" is omitted; "in all banks in Western Australia" is inserted after "close holidays".

[§§ 2—3 are repealed.]

2. = V. a. (No. 1164) § 18, except: "shall be given" is substituted for "should be given".

3. = V. a. (No. 1164) § 19, except: "upon such bank holiday" is substituted for "upon such bank holidays"; "on Christmas Day or Good Friday" is substituted for "upon the Lord's Day (commonly called Sunday)".

Offices of Land Titles and of Registry of Deeds. 4. The offices of Land Titles and of Registry of Deeds shall be closed on all bank holidays named in the Schedule to this Act, and on all days specially appointed by the Governor to be kept as bank holidays in the city or district of Perth, under the powers hereinafter contained; and if the

¹⁾ As amended by b. (6 Edw. 7, No. 12) § 4, *infra*.

day ordained or appointed as the last day for entry of any caveat, or for delivery of any memorial or for the performance in either of the said offices of any act by any officer or by any person whatsoever shall fall upon any bank holiday, the obligation to enter such caveat, deliver such memorial, or perform such act shall apply to the day next following such bank holiday; and the entry of such caveat, or the delivery of such memorial, or the performance of such act on such following day shall be equivalent to such entry, or delivery, or performance on the holiday.

5. = V. a. (No. 1164) § 20, except: "Western Australia" is substituted for "Victoria"; "borough, shire" is omitted; "days so appointed" is substituted for "day so appointed"; "this Part of" is omitted.

Day appointed for bank holiday may be altered by Governor in Council. 6. It shall be lawful for the Governor in like manner from time to time, when it is made to appear to the Governor in Council in any special case that in any year it is inexpedient that a day by this Act appointed for a bank holiday should be a bank holiday, to declare by proclamation in a *Government Gazette* published not less than one week before the day appointed for such holiday, that such day shall not in such year be a bank holiday, and to appoint such other day as to the Governor in Council may seem fit to be a bank holiday instead of such first-mentioned day, and thereupon the day so specially appointed shall in such year be substituted for the day appointed by this Act. — E. 34 & 35 Vic. c. 17, § 5; N. S. W. a. (No. 9 of 1898) 18; V. a. (No. 1164) 21; T. 10; S. A. a. (37 Vic. No. 19) 5; Q. a. (4 Edw. 7, No. 8) 6.

Short title. 7. This Act may be cited for all purposes as *The Bank Holidays Act, 1884*.

Schedule.

Easter Eve.
Easter Monday.
(Whit Monday).¹⁾

And the following days when week days:
New Year's Day.

The birthday of the sovereign.

The anniversary of the foundation of the Colony (the first of June),
Coronation Day,
The Prince of Wales' birthday,
The twenty-sixth day of December.

When any of the days last mentioned shall fall upon a Sunday, the next following Monday shall be a bank holiday.

b) 52 Vict. No. 3. An Act for the purpose of establishing a Holiday to commemorate the Foundation of Australia (26th November, 1888).

Application of The Bank Holidays Act to the 26th day of January. 1. That all the provisions of *The Bank Holidays Act, 1884*, shall be applicable to the twenty-sixth day of January in every year, as fully as if the said day had been included in the Schedule to the said Act.

Short title. 2. That this Act may be cited as *The Bank Holidays Act, 1884, Amendment Act, 1888*.

c) 63 Vic. No. 40. An Act to amend the Bank Holidays Act, 1884 (16th December, 1899).

Short title. 1. This Act may be cited as *The Bank Holidays Amendment Act, 1899*.

Amendment of Schedule of principal Act. 2. The words "Whit Monday", contained in the Schedule of *The Bank Holidays Act, 1884*, are hereby repealed.

Holidays in first Schedule to be included in Bank Holidays Act, 1884. 3. When this Act comes into operation, *The Bank Holidays Act, 1884*, shall be read and construed as if the days in the first Schedule to this Act mentioned were mentioned and included in the Schedule to such Act.

Holidays to be holidays in Civil Service. 4. The bank holidays in the Schedule to *The Bank Holidays Act, 1884*, and in the first Schedule to this Act mentioned shall be holidays in the Civil Service.

¹⁾ Repealed by c. 63 (Vic. No. 40) § 2, *infra*.

Bank Holidays to be held on Mondays. 5. Whenever any of the bank holidays in the second Schedule to this Act mentioned fall upon any day other than a Monday, the following Monday shall be a bank holiday instead of such day.

Commencement of Act. 6. This Act shall come into operation on the first day of January, 1900.

Schedules.

First Schedule.

Good Friday.	Christmas Day.
Proclamation Day (21st day of October).	

Second Schedule.

Birthday of the Sovereign.	Anniversary of the Foundation of the Colony (1st day of June).
Anniversary of the Coronation of the Sovereign.	Anniversary of the Settlement of Australia (26th January).
Birthday of the Prince of Wales.	Proclamation Day (21st day of October).

Bankruptcy.¹⁾

1. New South Wales.

No. 25 of 1898. An Act to consolidate the law relating to Bankruptcy (27th July 1898).

2. Victoria.

a) 54 Vic. No. 1102. An Act to consolidate the law relating to Insolvents and their Estates (10th July 1890). — b) 61 Vic. No. 1513. An Act to amend the law relating to Insolvency (6th September, 1897). — c) 62 Vic. No. 1544. An Act to amend section 118 of the Insolvency Act, 1897 (26th July, 1898). — d) 3 Edw. 7, No. 1836. An Act to amend the law relating to Insolvency (6th April, 1903).

3. Tasmania.

a) 34 Vic. No. 32. An Act to provide for the Distribution of the Assets of Insolvent Debtors amongst their Creditors (18th October, 1870). — b) 63 Vic. No. 12. An Act to amend The Bankruptcy Act, 1870 (12th October, 1899).

4. South Australia.

a) 49 & 50 Vic. No. 385. An Act to amend and consolidate the law relating to Insolvent Debtors (17th November, 1866). — b) 50 & 51 Vic. No. 404. An Act to amend The Insolvent Act, 1886 (23d November, 1887). — c) 59 & 60 Vic. No. 655. An Act to amend the law relating to Deeds of Assignment (19th December, 1896).

5. Queensland.

a) 38 Vic. No. 5. An Act to provide for the Distribution of the Estates of Insolvent Debtors amongst their Creditors, and their Release from their Debts, and for the Punishment of Fraudulent Debtors, and for other Purposes (8th July, 1874). — b) 40 Vic. No. 12. An Act to amend The Insolvency Act of 1874 (22d November, 1876). — c) 57 Vic. No. 15. An Act to make better provision for the Administration of Estates in Insolvency, Intestacy, and Insanity (3d October, 1893).

¹⁾ Only the titles of the Acts in force are given. It is probable that a Commonwealth Bankruptcy Act, replacing these enactments, will soon be adopted.

6. Western Australia.

a) 55 Vic. No. 32. An Act to amend and consolidate the law of Bankruptcy (18th March, 1892). — b) 62 Vic. No. 15. An Act to amend the Bankruptcy Act, 1892 (28th October, 1898).

C. Ordinances of the Territory of Papua.¹⁾

By Ordinances the following Acts of the Parliament of Queensland have been adopted and are in force in the Territory of Papua, in so far as they are applicable to the circumstances of the Territory:

11 Vic. No. 19. An Act for facilitating the Winding-up of Joint-Stock Companies unable to meet their Pecuniary Engagements (17th September 1847). — 11 Vic. No. 56. An Act to enable any Joint-Stock-Company to sue any of its own Members, and to enable any Member of any such Joint-Stock Company to sue any such company; and for other Purposes (17th June, 1848). — 27 Vic. No. 4. An Act for the Incorporation, Regulation, and Winding-up of Trading Companies and other Associations (1st September, 1863). — 50 Vic. No. 31. An Act to amend and declare the law of Queensland with respect to Joint-Stock Companies incorporated in other Parts of Her Majesty's Dominions (2d December, 1886). — 38 Vic. No. 5. An Act to provide for the Distribution of the Estates of Insolvent Debtors amongst their Creditors, and their Release from their Debts, and for the Punishment of Fraudulent Debtors, and for other Purposes (8th July, 1874). — 40 Vic. No. 12. An Act to amend The Insolvency Act of 1874 (22th November, 1876).

By regulation under the *Public Service Ordinance of 1907*, the following are declared to be public holidays in the Territory: the first day of January, Good Friday, the day after Good Friday, Easter Monday, Empire Day — the twenty-fourth of May, the anniversary of the birthday of the Prince of Wales, the anniversary of British New Guinea becoming a territory of the Commonwealth (1st September), the anniversary of the foundation of the possession of British New Guinea (4th September), the anniversary of the birthday of the Sovereign, Christmas Day, the day after Christmas Day.

II.

The Dominion of New Zealand.

Mercantile Law.²⁾

No. 117 of 1908. An Act to consolidate certain enactments of the General Assembly relating to Trade and Commerce.

Short title. Enactments consolidated. Application of Parts II, III, and IV. 1. 1. The short title of this Act is *The Mercantile Law Act, 1908*. 2. This Act is a consolidation of the enactments mentioned in the Schedule hereto. 3. All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act. 4. In order to remove any doubt as to the applicability of the provisions of Parts II, III and IV of this Act to and in respect of navigable lakes and inland navigable waters of New Zealand, it is hereby declared that those provisions extend and apply to all parts of New Zealand so far as the same are applicable. 5. This Act is divided into Parts, as follows: Part I. Mercantile Agents

¹⁾ For this statement regarding the commercial law in force in the Territory of Papua the author is indebted to the Honorable J. H. Plunkett Murray, former Chief Justice of Papua. —

²⁾ The references in the notes in this Part are to (E.) the English Act indicated and to the Factors Acts of the Australian States reprinted *supra*.

(Sections 2 to 12). Part II. Bills of Lading (Sections 13 to 16). Part III. Carriers (Sections 17 to 20). Part IV. Delivery of Goods and Lien for Freight (Sections 21 to 31). Part V. Unpaid Vendors of Warehoused Goods (Sections 32 to 43). Part VI. Book-purchasers Protection (Section 44).

Part I. Mercantile Agents.

Interpretation. 2. 1. In this Part of this Act, if not inconsistent with the context; "Document of title" includes any bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented; "Goods" includes wares and merchandise; "Mercantile agent" means an agent having in the customary course of his business as such agent authority either to sell goods, or to consign goods for the purpose of sale, or to buy goods, or to raise money on the security of goods; "Pledge" includes any contract pledging or giving a lien or security on goods, whether in consideration of an original advance, or of any further or continuing advance, or of any pecuniary liability. 2. A person shall be deemed to be in possession of goods, or of the documents of title to goods, where the goods or documents are in his actual custody, or are held by any other person subject to his control or for him or on his behalf. — E. 52 & 53 Vic. c. 45, § 1; N. S. W. 4; T. 3; S. A. 9; Q. 2; W. A. 5. — Where on a single occasion a person whose business is that of a carrier is intrusted with the sale of a single article, such person is not a "mercantile agent" within the meaning of this Act. — *Nicholson v. Bank of New Zealand*, 12 L. R. (N. Z.) 427.

Dispositions by mercantile agents.

Powers of mercantile agent with respect to disposition of goods. 3. 1. Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent shall, subject to the provisions of this Part of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same. 2. Where a mercantile agent has, with the consent of the owner, been in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition which would have been valid if the consent had continued shall be valid notwithstanding the determination of the consent, provided that the person taking under the disposition has not at the time thereof notice that the consent has been determined. 3. Where a mercantile agent has obtained possession of any documents of title to goods by reason of his being or having been, with the consent of the owner, in possession of the goods represented thereby, or of any other documents of title to the goods, his possession of the first-mentioned documents shall, for the purposes of this Part of this Act, be deemed to be with the consent of the owner. 4. For the purposes of this Part of this Act the consent of the owner shall be presumed in the absence of evidence to the contrary. — E. 52 & 53 Vic. c. 45, § 2; N. S. W. 5—7; T. 5; S. A. 8, 9; Q. 3; W. A. 2. — In the absence of a provision similar to that contained in subsection (2) a person taking goods from an agent whose authority has been determined would not be entitled to retain the goods as against the principal. — *Cp. Merchant Banking Co. v. Wilson, Taine & Co.*, L. R. 3 S. C. (N. Z.) 451.

Effect of pledges of documents of title. 4. A pledge of the documents of title to goods shall be deemed to be a pledge of the goods. — E. 52 & 53 Vic. c. 45, § 3; N. S. W. 5, 6, 7; T. 6; S. A. 8, 9; Q. 4; W. A. 2.

Pledge for antecedent debt. 5. Where a mercantile agent pledges goods as security for a debt or liability due from the pledgor to the pledgee before the time of the pledge, the pledgee shall acquire no further right to the goods than could have been enforced by the pledgor at the time of the pledge. — E. 52 & 53 Vic. c. 45, § 4; N. S. W. 8; T. 7; S. A. 8; Q. 5.

Rights acquired by exchange of goods or documents. 6. The consideration necessary for the validity of a sale, pledge, or other disposition of goods in pursuance of this Part of this Act may be either a payment in cash, or the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, or any other valuable consideration; but where goods are pledged by

a mercantile agent in consideration of the delivery or transfer of other goods, or of a document of title to goods, or of a negotiable security, the pledgee shall acquire no right or interest in the goods so pledged in excess of the value of the goods, documents, or security when so delivered or transferred in exchange. — E. 52 & 53 Vic. c. 45, § 5; N. S. W. 7; T. 8; S. A. 7; Q. 6.

Agreements through clerks, &c. *Ibid*, sec. 8. 7. For the purposes of this Part of this Act an agreement made with a mercantile agent through a clerk or other person authorised in the ordinary course of business to make contracts of sale or pledge on his behalf shall be deemed to be an agreement with the agent. — E. 52 & 53 Vic. c. 45, § 6; T. 9; Q. 7.

Provisions as to consignors and consignees. 8. 1. Where the owner of goods has given possession of the goods to another person for the purpose of consignment or sale, or has shipped the goods in the name of another person, and the consignee of the goods has not had notice that such person is not the owner of the goods, the consignee shall, in respect of advances made to or for the use of such person, have the same lien on the goods as if such person were the owner of the goods, and may transfer any such lien to another person. 2. Nothing in this section shall limit or affect the validity of any sale, pledge, or disposition by a mercantile agent. — E. 52 & 53 Vic. c. 45, § 7; T. 10; Q. 8.

Effect of transfer of document of title to goods on vendor's lien, and right of stoppage in transitu. 9. Where a document of title to goods has been lawfully transferred to a person as a buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*: Provided that this section shall be construed subject to section forty-eight of *The Sale of Goods Act, 1908*. — E. 52 & 53 Vic. c. 45, § 10; T. 13; Q. 11; W. A. 5.

Miscellaneous.

Mode of transferring documents. 10. For the purposes of this Part of this Act the transfer of a document may be by indorsement, or where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer, then by delivery. — E. 52 & 53 Vic. c. 45, § 11; N. S. W. 3; T. 14; S. A. 9; Q. 12; W. A. 5.

Saving of rights of true owner. 11. Nothing in this Part of this Act shall: a) Authorise a mercantile agent to exceed or depart from his authority as between himself and his principal, or exempt him from any liability, civil or criminal, for so doing; or b) Prevent the owner of goods from recovering the goods from a mercantile agent or his trustee in bankruptcy at any time before the sale or pledge thereof; or c) Prevent the owner of goods pledged by a mercantile agent from having the right to redeem the goods at any time before the sale thereof, on satisfying the claim for which the goods were pledged and paying to the mercantile agent, if by him required, any money in respect of which such agent would by law be entitled to retain the goods or the documents of title thereto, or any of them, by way of lien as against the owner, or from recovering from any person with whom the goods have been pledged any balance of money remaining in his hands as the produce of the sale of the goods after deducting the amount of his lien; or d) Prevent the owner of goods sold by a mercantile agent from recovering from the buyer the price agreed to be paid for the same, or any part of that price, subject to any right of set-off on the part of the buyer against such agent. — E. 52 & 53 Vic. c. 45, § 12; N. S. W. 8, 9; T. 15; S. A. 10, 11; Q. 13.

Saving for common-law powers of mercantile agent. 12. The provisions of this Part of this Act shall be construed in amplification and not in derogation of the powers exercisable by a mercantile agent independently of this Part of this Act. — E. 52 & 53 Vic. c. 45, § 15; N. S. W. 3; T. 16; Q. 14.

*Part II. Bills of Lading.*¹⁾

Rights of action and liabilities in respect of goods under bills of lading to vest in consignees and indorsees. 13. Every consignee of goods named in a bill of lading,

¹⁾ The references in this Part are to E. the English Act indicated and to the Bills of Lading Acts of the Australian States reprinted *supra*.

and every indorsee of a bill of lading, to whom the property in the goods therein mentioned passes on or by reason of such consignment or indorsement, shall have transferred to and vested in him all rights of action, and be subject to the same liabilities, in respect of such goods as if the contract contained in the bill of lading had been made with himself. — E. 18 & 19 Vic. c. 111, § 1; N. S. W. 5; V. 108.

Right of stoppage in transitu, or claims for freight, not affected. 14. Nothing herein shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or indorsee by reason or in consequence of his being such consignee or indorsee, or of his receipt of the goods by reason or in consequence of such consignment or indorsement. — E. 18 & 19 Vic. c. 111, § 2; N. S. W. 6.

Bill of lading in hands of consignee, &c., conclusive evidence as against master, &c. 15. Every bill of lading in the hands of a consignee or indorsee for valuable consideration, representing goods to have been shipped on board a vessel, shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading has had actual notice at the time of receiving the same that the goods were not in fact laden on board. — E. 18 & 19 Vic. c. 111, § 3; N. S. W. 7.

When master may be exonerated from liability. 16. The master or other person so signing any bill of lading may exonerate himself in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or some person under whom the holder claims. — E. 18 & 19 Vic. c. 111, § 3; V. 111; T. 3.

Part III. Carriers.

Carriers liable for neglect or default in carriage of goods, notwithstanding notice to the contrary. 17. Every common carrier for hire by land, or by sea between any ports in New Zealand is liable for the loss of or injury done to any horses, cattle, or other animals, or to any articles, goods, or things, in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of such carrier or his servants, notwithstanding any notice, condition, declaration, or contract given, made, or entered into by such carrier contrary thereto, or in anywise limiting such liability, in the same manner and to the same extent as if no such notice, condition, declaration, or contract had been given, made, or entered into. — The Carriers Act (11 Geo. 4 & 1 Wm. 4, c. 68) is in force in New Zealand. — Rolleston v. Fuhrman, 1 J. R. (N. Z.) 68.

Exception of conditions for carrying adjudged by a Court or Judge to be reasonable. 18. Nothing herein shall be construed to prevent a carrier from making such conditions with respect to receiving, forwarding, and delivering any of the said animals, articles, goods, or things as are adjudged by the Court before whom any question relating thereto is tried to be just and reasonable. — The effect of these sections of the *Mercantile Act* is to make common carriers by sea in New Zealand subject to the same rules that govern carriers by land in England. Hence, a condition in a contract of affreightment purporting to exempt the carrier from responsibility for the negligence of his servants is *prima facie* unjust and unreasonable. — Staples v. Joseph, 6 L. R. (N. Z.) 236.

Special contracts not binding unless signed. 19. No special contract between a carrier and any other party respecting the receiving, forwarding, or delivering of any animals, articles, goods, or things as aforesaid shall be binding on or affect any such party, unless the same is signed by him or by the person delivering such animals, articles, goods, or things respectively for carriage. — A condition on the back of a passenger's ticket issued by a steamship company offering to the passenger the alternative of having a certain amount of luggage carried free at owners' risk, or of paying freight for the whole of his luggage, is a special contract within this section of the *Mercantile Act*, and is not binding, unless signed by the passenger. *Quære*, whether such a condition is just and reasonable, and would be good even if so signed. — Union Steamship Co. v. Morton, 8 L. R. (N. Z.) 747.

Carriers not liable in certain cases beyond limited amount unless value declared and extra payment made. Proof of the value to be the person claiming compensation. 20. 1. No greater damages shall be recovered for the loss of or injury to any of such animals beyond the sums hereinafter mentioned, that is to say: a) For any horse, fifty pounds; b) Neat cattle, per head, fifteen pounds; c) Sheep or pigs, per head, two pounds, — unless the person sending or delivering the same to such carrier at the time of delivery declares them to be respectively of higher value than as above-mentioned, in which case it

shall be lawful for such carrier to receive, by way of compensation for the increased risk and care thereby occasioned, a reasonable percentage on the excess of the value so declared above the respective sums so limited as aforesaid, and which shall be paid in addition to the ordinary rate of charge. 2. The proof of the value of such animals, articles, goods, and things, and the amount of injury done thereto, shall in all cases lie upon the person claiming compensation for such loss or injury.

Part IV. Delivery of Goods, and Lien for Freight.

Interpretation. 21. In this Part of this Act, if not inconsistent with the context: "Entry" means the entry required by the Customs laws to be made for the landing or discharge of goods from an importing ship; "Goods" includes every description of wares and merchandise; "Owner of goods" includes every person who is for the time being entitled, either as owner or agent for the owner, to the possession of the goods, subject in the case of a lien to such lien; "Report" means the report required by the Customs laws to be made by the master of any importing ship; "Shipowner" includes the master of the ship and every other person authorised to act as agent for the owner or entitled to receive the freight, demurrage, or other charges payable in respect of such ship; "Warehouse" includes all warehouses, buildings, and premises in which goods when landed from ships may be lawfully placed; "Warehouse-owner" means the occupier of any warehouse as hereinbefore defined; "Wharf" includes all wharves, quays, docks, and premises in or upon which any goods when landed from ships may be lawfully placed; "Wharf-owner" means the occupier of any wharf as hereinbefore defined. — E. 57 & 58 Vic. c. 60, § 491.

Power to shipowner to enter and land goods in default of entry and landing by owner of goods. 22. Where the owner of goods imported from foreign parts into New Zealand fails to make entry thereof, or, having made entry thereof, to land the same or take delivery thereof, and to proceed therewith with all convenient speed by the times severally hereinafter mentioned, the shipowner may make entry of and land or unship the said goods at the times, in the manner, and subject to the conditions following, that is to say: a) If a time for the delivery of the goods is expressed in the charter party, bill of lading, or agreement, then at any time after the time so expressed; b) If no time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the expiration of seventy-two hours, exclusive of a Sunday or holiday, after the report of the ship; c) If any wharf or warehouse is named in the charter-party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed, and if they can be conveniently there received, the shipowner in landing them by virtue of this enactment shall cause them to be placed on such wharf or in such warehouse; d) In other cases the shipowner in landing goods by virtue of this enactment shall place them on or in some wharf or warehouse, on or in which goods of a like nature are usually placed; such wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the Minister of Customs for the landing of dutiable goods; e) If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land or take delivery of the same he shall be allowed so to do, and his entry shall in such case be preferred to any entry made by the shipowner; f) If any goods are for the purpose of convenience in assorting the same landed at the wharf where the ship is discharged, and the owner of the goods at the time of such landing has made entry and is ready and offers to take delivery thereof, and to convey the same to some other wharf or warehouse, such goods shall be assorted at landing, and shall, if demanded, be delivered to the owner thereof within twenty-four hours after assortment; and the expense of and consequent on such landing and assortment shall be borne by the shipowner; g) If at any time before the goods are landed or unshipped the owner thereof has made entry for the landing and warehousing thereof at any particular wharf or warehouse other than that at which the ship is discharging, and has offered and been ready to take delivery thereof, and the shipowner has failed to make such delivery, and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then the shipowner shall before landing or unshipping such goods under the power hereby given to him, give to the owner of the goods or of such wharf or warehouse as last aforesaid twenty-four hours' notice in writing of his readiness to deliver the goods, and shall, if he lands or

unships the same without such notice, do so at his own risk and expense. — E. 57 & 58 Vic. c. 60, § 493.

If when goods are landed the shipowner gives notice for that purpose the lien for freight is to continue. Wharf or warehouse owner to retain goods till lien discharged. Lien to be discharged on proof of payment. 23. 1. If at any time when any goods are landed from any ship and placed in the custody of any person as a wharf or warehouse owner, the shipowner gives to the wharf or warehouse owner notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner to an amount to be mentioned in such notice, the goods so landed shall in the hands of the wharf or warehouse owner continue liable to the same lien, if any, for such charges as they were subject to before the landing thereof. 2. The wharf or warehouse owner receiving such goods shall retain them until the lien is discharged as hereinafter mentioned, and if he fails so to do shall make good to the shipowner any loss thereby occasioned to him. 3. On the production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to the wharf or warehouse owner of a copy thereof or of a release of freight from the shipowner, the said lien shall be discharged. — E. 57 & 58 Vic. c. 60, § 494.

Lien to be discharged on deposit with warehouse-owner. 24. The owner of the goods may deposit with the wharf or warehouse owner a sum of money equal in amount to the sum so claimed as aforesaid by the shipowner, and thereupon the lien shall be discharged, but without prejudice to any other remedy which the shipowner may have for the recovery of the freight. — E. 57 & 58 Vic. c. 60, § 495 (2).

Warehouse-owner may at the end of fifteen days, if no notice is given, pay deposit to shipowner. 25. If such deposit is made with the wharf or warehouse owner, and the person making the same does not within fifteen days after making it give to the wharf or warehouse owner notice in writing to retain it, stating in such notice the sum, if any, which he admits to be payable to the shipowner, or that he does not admit any sum to be so payable, the wharf or warehouse owner may at the expiration of such fifteen days pay the sum so deposited over to the shipowner, and shall by such payment be discharged from all liability in respect thereof. — E. 57 & 58 Vic. c. 60, § 496 (1).

Course to be taken if notice to retain is given. 26. If such deposit is made with the wharf or warehouse owner, and the person making the same does within fifteen days after making it give to the wharf or warehouse owner notice as aforesaid: a) The wharf or warehouse owner shall immediately apprise the shipowner of such notice, and shall pay or tender to him out of the sum deposited the sum admitted by such notice to be payable, and shall retain the balance, or, if no sum is admitted to be payable, the whole of the sum deposited for thirty days from the date of the said notice; b) At the expiration of such thirty days, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum, or otherwise for the settlement of any disputes between them concerning such freight or other charges as aforesaid, and notice in writing of such proceedings has been served on him, the wharf or warehouse owner shall pay the said balance or sum over to the owner of the goods, and shall by such payment be discharged from all liability in respect thereof. — E. 57 & 58 Vic. c. 60, § 496 (2) and (3).

After ninety days warehouse-owner may sell goods by public auction. 27. If the lien is not discharged and no deposit is made as hereinbefore mentioned, the wharf or warehouse owner may, and if required by the shipowner shall, at the expiry of ninety days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as may be fixed by Lloyd's Agent or any surveyor to be appointed by such wharf or warehouse owner, sell by public auction either for home use or exportation the said goods, or so much thereof as may be necessary, to satisfy the charges hereinafter mentioned. — E. 57 & 58 Vic. c. 60, § 497 (1).

Notices of sale to be given. Title not invalidated by omission to give notice. 28. 1. Before making such sale, the wharf or warehouse owner shall give notice thereof by advertisement in one newspaper circulating in the neighbourhood, a copy whereof shall be kept posted up in some conspicuous part of the said wharf or warehouse. 2. If the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents in the possession of the wharf or warehouse owner, or is otherwise known to him, such wharf or warehouse owner shall give notice of the sale to the owner of the goods by letter sent by post.

3. But the title of a *bonâ fide* purchaser of such goods shall not be invalidated by reason of the omission to send notice as hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent. — E. 57 & 58 Vic. c. 60, § 497, 2—3.

Moneys arising from sale, how to be applied. 29. In every case of any such sale as aforesaid the wharf or warehouse owner shall apply the moneys received from the sale in the following order: a) If the goods are sold for home use, in payment of any Customs or excise duties owing in respect thereof; b) In payment of the expenses of the sale; c) In the absence of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, in payment of the rent, rates, and other charges due to the wharf or warehouse owner in respect of the said goods; d) In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods; e) But in case of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, then such charges shall have priority according to the terms of such agreement, and f) The surplus, if any, shall be paid to the owner of the goods. — E. 57 & 58 Vic. c. 60, § 498.

Warehouse-owner's rent and expenses. 30. Where goods are placed in the custody of a wharf or warehouse owner under the authority of this Part of this Act, the said owner shall be entitled to rent in respect of the same, and shall also have power from time to time at the expense of the owner of the goods to do all such reasonable acts as in the judgment of the said wharf or warehouse owner are necessary for the proper custody and preservation of such goods, and shall have a lien thereon for the said rent and expenses. — E. 57 & 58 Vic. c. 60, § 499.

Warehouse-owner's protection. 31. Nothing in this Part of this Act shall compel any wharf or warehouse owner to take charge of any goods which he would not be liable to take charge of if this Part of this Act had not passed, nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Part of this Act. — E. 57 & 58 Vic. c. 60, § 500.

Part V. Unpaid Vendors of Warehoused Goods.

Interpretation. 32. In this Part of this Act, if not inconsistent with the context: "Bonded warehouse" means a building approved and appointed by the Minister of Customs for the warehousing of goods without payment of duty on the first entry thereof. "Free warehouse" means a building licensed by the Minister of Customs to be used exclusively for the storage of any goods not liable to the payment of Customs duties, or whereon such duties shall have been paid previously to storage. "Warehouseman" means the person for whose immediate benefit and under whose control the storage of goods in a bonded or free warehouse is carried on. "Warehouse-keeper" means the person having the management of any bonded or free warehouse, whether the warehouseman himself, or a person employed by him. "Warehouse-keepers' book" means the book wherein the warehouse-keeper enters a list of all goods received in and delivered out of the warehouse managed by him. "Sale" means any absolute disposition of goods, whether for payment to be made in cash or upon credit. "Vendee" means the person purchasing upon any such sale. "Pledge" means any deposit and delivery of warrants or certificates with intent that the holder thereof dispose of the goods to which such warrants or certificates relate in the event of the terms of the deposit not being fulfilled by the persons making the same. "Pledgee" means the person in whose favour the deposit of the warrants or certificates is made. "Sub-purchaser" means any person purchasing from or under the person to whom the original bonder or storer of goods in a bonded or free warehouse sold the same and delivered the warrants or certificates relating thereto. "Warrants" or "certificates" means any receipt or undertaking, printed or written or partly printed and partly written, issued by or on behalf of the warehouseman, and signed by him or on his behalf, acknowledging the receipt in a specified warehouse of goods to be held on behalf of a person named and described, giving the particulars of the goods stored, the marks or brands (if any) thereon, the terms upon which the goods are stored, and containing and undertaking on the part of the warehouseman to deliver the same to the indorsee, holder, or bearer of the warrant or certificate.

Unpaid vendor's lien determined on delivery of bond warrants to bonâ fide holder for value. 33. In all cases where warrants or certificates for goods liable to the payment of Customs duties are issued, importing a receipt of such goods by or on behalf of any bonded warehouseman, and an undertaking to deliver the same to the holder of the warrants or certificates on presentation and demand, and on payment of the duties, rents, and charges lawfully demandable, and such warrants or certificates are delivered over on a sale of the goods by the person to whom the said warrants or certificates are issued by or on behalf of the warehouseman, the rights legal and equitable of such person, as an unpaid vendor, to stop the actual delivery of the goods comprised in and affected by such warrants or certificates shall be deemed at an end when such warrants or certificates are delivered over *bonâ fide* and for value, on either a sale or pledge of the said goods by any person purchasing from the original bonder thereof.

Possession of warrants *primâ facie* evidence of ownership. 34. On a sale or pledge of goods stored in any bonded warehouse, the possession of warrants or certificates importing a receipt and undertaking to deliver as aforesaid shall be deemed *primâ facie* evidence of the ownership of the holder of the said warrants or certificates in the goods and merchandise affected thereby.

Holder of warrant entitled to delivery. 35. Any holder of a warrant or certificate importing the obligations aforesaid shall be entitled, on request and on compliance with the terms of the contract implied by such warrants or certificates between the warehouseman and the original bonder of the goods, to have delivery thereof, or to have his name entered upon the books of the warehouse-keeper as the owner of the said goods.

Registered holder of warrant deemed to be owner. 36. Save in the event of fraud being proved in the procurement of the entry of the name of the holder of the certificates or warrants in the warehouse-keeper's books, the person whose name is so entered shall be conclusively deemed the then owner in possession of the said goods, subject to the provisions hereinafter contained.

The registered transferee of warrant to lose his right of lien if warrant afterwards delivered over bonâ fide and for value. 37. In the event of any transfer being entered in the books of the warehouse-keeper, and the then owner of bonded goods delivers over the warrants or certificates relating to or affecting the same to any other person on a sale or pledge of the said goods; and such warrants or certificates are afterwards delivered over *bonâ fide* and for value to any sub-purchaser or pledgee by the person receiving the same from the owner, whose name is entered as aforesaid, the rights legal and equitable of the said owner as an unpaid vendor to stop the actual delivery of the goods comprised in and affected by such warrants or certificates shall be deemed at an end as from the time of the *bonâ fide* delivery of the warrants or certificates to the first sub-purchaser or pledgee for value.

Warrants of free goods put on the same footing as bond warrants. 38. Where goods are stored in any free warehouse, and warrants or certificates, importing on behalf of the warehouseman a receipt of the goods, and an undertaking to deliver the same on presentation and demand and on payment of the rents and charges lawfully demandable, are delivered to and accepted by the person originally warehousing such goods, the respective rights and liabilities of the warehouseman and warehouse-keeper, and of the persons to whom the said warrants or certificates were originally issued, or are afterwards delivered or redelivered upon a resale or pledge *bonâ fide* and for value of the goods, or in whose name the ownership may be transferred in the books of the warehouse-keeper, or who afterwards acquires possession *bonâ fide* and for value of the said warrants or certificates, shall be the same in all respects as is hereinbefore provided with regard to goods liable to the payment of Customs duties and stored in a bonded warehouse.

Provisions same in respect of bonded and free warehouses. 39. The provisions herein relative to the rights of, or incident to the ownership of, goods stored in a bonded warehouse shall be as applicable to the ownership of goods stored in a free warehouse as if such provisions had been respectively repeated and expressly applied thereto.

Vendor's lien not prejudiced save as against bona fide sub-purchaser or pledgee for value. 40. Nothing herein shall in any way prejudice the rights of an unpaid vendor of goods to stop delivery thereof until payment of the price payable to him whenever

such rights may be lawfully exercised without detriment or injury to any sub-purchaser or pledgee *bonâ fide* and for value, or to the rights of any trustee in bankruptcy claiming under the purchaser from the unpaid vendor.

Goods not to be transferred in books of warehouseman except on production of warrant. 41. 1. No entry shall be made in the books of any warehouseman or keeper of any bonded or free warehouse transferring the ownership or possession of any goods, unless the person applying for such entry to be made produces and delivers up the warrants or certificates originally issued. 2. Thereupon the warehouseman or the keeper of his warehouse may cancel the said warrants or certificates and issue others in lieu thereof, and such new warrants or certificates may in like manner be cancelled, and others issued in substitution thereof.

Special contracts restraining negotiability of warrants permitted. Terms of contract to appear on face of warrant. 42. 1. Notwithstanding anything herein, the person originally storing goods in any bonded or free warehouse, and the warehouseman thereof, may enter into a special contract restraining the negotiability of the warrants or certificates issued in respect of the said goods, or providing some special method of transfer of the property in and possession of such goods. 2. In every such case the terms of such special contract shall be incorporated in and made to appear upon the face of the said warrants or certificates, so that the holder thereof may have his attention expressly directed thereto.

Warehouseman's lien not prejudiced by sale or transfer of goods. 43. No transfer of the ownership or possession of the goods stored in any bonded or free warehouse shall in any way prejudicially affect the lien or rights of the warehouseman in respect of any rent or charges previously incurred or become payable on account of the goods the ownership or possession whereof may be so transferred as aforesaid.

Part VI. Book-purchasers Protection.

When agreement for purchase of books to be void. Vendor to give duplicate of agreement to purchaser. 44. 1. Every agreement for the purchase of any book or part of a book, or of engravings, lithographs, or pictures, or of any other like matter, whether illustrated or not (herein termed "printed matter"), shall be absolutely void in every case where such printed matter is not to be delivered to the purchaser at the date of such agreement in a completed form, and so as to embrace the whole of the volumes or numbers of the printed matter, unless the purchaser of such printed matter first signs an agreement on a form in which, in red capital letters not less than great primer, the following words and figures are printed: namely, "The total liability of the purchaser under this agreement is (*inserting the amount in similar printed letters and also in printed figures of like size*)," and unless such form is printed or written in black, wholly or partly, across and subsequent to the printing of such red letters and figures. 2. The vendor of such printed matter, or his agent, shall at the time of the signing of the agreement aforesaid also hand over to the purchaser a duplicate of the agreement, having printed on it in addition the words "Duplicate to be kept by purchaser," and the name and address in full of the vendor; and the vendor shall not be entitled to recover under such agreement unless he produces an acknowledgment by the purchaser that he has received such duplicate of the agreement as aforesaid. 3. In any action in any Court on any contract for the purchase of such printed matter the Court may determine the value of the said printed matter, proof of which shall be on the vendor.

Schedule.

Enactments consolidated.

- 1880, No. 12. The Mercantile Law Act, 1880: Except sections 4, 41, 43, 45 to 51, 59 to 77, and 81 to 83.
- 1889, No. 11. The Mercantile Law Act Amendment Act, 1889.
- 1890, No. 11. The Mercantile Agents Act, 1890: Except sections 10 and 11.
- 1891, No. 21. The Book-purchasers Protection Act, 1891.

Partnership Act.¹⁾

No. 139 of 1908. An Act to consolidate certain enactments of the General Assembly relating to the law of Partnership.

Short title. Enactments consolidated. 1. 1. The short title of this Act is *The Partnership Act, 1908*. 2. This Act is a consolidation of the enactments mentioned in the Schedule hereto. 3. All matters and proceedings commenced under the said enactments, and pending or in progress on the coming into operation of this Act, may be continued, completed or enforced under this Act. 4. This Act is divided into Parts, as follows: Part I. The general law relating to partners (Sections 4—47). Part II. Special partnerships (Sections 48—67). — E. § 48; N. S. W. 48; V.; T. 1; S. A. 48; Q. 1; W. A. 1.

Interpretation. 2. In this Act, if not inconsistent with the context: “Business” includes every trade, occupation, or profession; “Court” includes every Court and Judge having jurisdiction in the case. — E. § 45; N. S. W. 45; V. 4; T. 4; S. A. 45; Q. 3; W. A. 3.

*Part I. The General Law relating to Partners.**Nature of partnership.*

3. = N. S. W. § 46.

4. = N. S. W. § 1, except: Subsection 2. reads as follows: But the relation of any company or association registered as a company under *The Companies Act, 1908*, or any other Act of the General Assembly for the time being in force, and relating to the registration of joint stock, trading, or mining companies; or formed or incorporated by or in pursuance of any other act of the General Assembly, or Letters Patent, or Royal Charter, is not a partnership within the meaning of this Act. — E. § 1; N. S. W. 1; V. 1; T. 6; S. A. 1; Q. 5; W. A. 4. — The terms of the agreement must not be so vague and uncertain as to prevent a contract from arising. But where an agreement for a partnership has actually been carried out by both parties the mere fact that an important term of the contract has not been settled does not prevent the partnership from coming into existence, but the partner in whose favour the term would have operated cannot claim the benefit of it, unless, *semble*, the term is capable of settlement by an inquiry. — *Carswell v. Riordan*, 9 L. R. (N. Z.) 638 (distinguishing *Figes v. Cutler*, 3 Stark. 139). Cp. *Magnus v. Moss*, 3 S. R. (N. S. W.) 686; 20 W. N. (N. S. W.) 262. The members of friendly society, registered under the *Friendly Societies Act, 1882*, are not liable as partners on contracts made by the trustees of the society. — *Bell v. Fitness*, 11 L. R. (N. Z.) 372. Partnership is a personal relationship. A person who is nominally a partner in a firm, but in reality is merely acting as agent for another, who is the real partner, is entitled to an indemnity against his principal for all losses he may sustain in such representative capacity. — *In re Wiltshire & Scott Ex parte Scott*, 24 L. R. (N. Z.) 354; 7 Gaz. L. R. (N. Z.) 387. The agreement may be oral or in writing, and a parol agreement for a partnership relating to lands is not within the Statute of Frauds. — *Price v. De Latour*, 6 Gaz. L. R. (N. Z.) 48.

5. = N. S. W. § 2, except: in 3. a) “amount” is substituted for “demand”. — E. § 2; N. S. W. 2; V. 6; T. 7; S. A. 2; Q. 6; W. A. 8. — As to the application of the provisions of the *Real Estate Descent Act* to land held by partners as tenants in common, see *Walker v. Creaven*, 25 L. R. (N. Z.) 329.

6—7. = N. S. W. § 3—4.

Relations of partners to persons dealing with them.

8. = N. S. W. § 5. — E. § 5; N. S. W. 5; V. 9; T. 10; S. A. 5; Q. 8; W. A. 26. — One partner can bind another by deed if the dealing is one that does not require to be by deed. — *Hurrey v. Bank of New South Wales*, L. R. 1 C. A. (N. Z.) 115; *In re McIntyre v. Edwards*, Ex parte Gillard, 13 L. R. (N. Z.) 735. See also *The South Pacific Loan & Investment Co. Ltd. v. The Official Assignee of S. E. Wright*, 17 L. R. (N. Z.) 492. Where an act is within the apparent scope of the partner's authority the firm is bound even though the proceeds are converted to the personal use of one of the partners. — *Paterson, Mosman & Co. v. Williams & Creagh*, 4 Gaz. L. R. (N. Z.) 387; *Walker & Walker v. Creaven*, 7 Gaz. L. R. (N. Z.) 435; 8 Gaz. L. R. (N. Z.) 113; 25 L. R. (N. Z.) 329.

9—10. = N. S. W. § 6—7.

11. = N. S. W. § 8, except: “restriction” is substituted for “restrictions”.

12. = N. S. W. § 9.

¹⁾ The statutes referred to in the annotations are those of England (E.) 53 & 54 Vic. c. 39, and the Partnership Acts of the Australian States.

13. = N. S. W. § 10, except: "partner in the firm" is substituted for "partner of the firm".

14. = N. S. W. § 11, except: in b) "where" is substituted for "when".

15. = N. S. W. § 12. — E. § 12; N. S. W. 12; V. 16; T. 17; S. A. 12; Q. 15; W. A. 19. — A partner is liable for false representations made by his co-partner in the course of the partnership business. — *Smith v. McKenzie*, L. R. 1 C. A. (N. Z.) 1.

16. = N. S. W. § 13. — E. § 13; N. S. W. 13; V. 17; T. 18; S. A. 13; Q. 16; W. A. 20. — Where a person misappropriates trust funds before a partnership is entered into, and afterwards takes a partner, the payment of interest on such funds by the firm does not establish such negligence or misconduct on the part of the incoming partner as to make him liable for the antecedent fraud. — *Arden v. Roy*, L. R. 1 C. A. (N. Z.) 365.

17. = N. S. W. § 14, except: in 2. "executors' or administrators" is substituted for "executors or administrators".

18—19. = N. S. W. § 15—16.

20. = N. S. W. § 17, except: in 2. "debts or obligations" is substituted for "debt and obligation"; in 3. "express" is substituted for "expressed". — E. § 17; N. S. W. 17; V. 21; T. 22; S. A. 17; Q. 20; W. A. 24. — Where there is a change in a firm, and by virtue of an agreement the firm as newly constituted is to take over the debts and liabilities of the old firm, very slight evidence is sufficient to show assent of the creditor to the change. — *In re Guthrie & Co.*, Ex parte The Bank of Australasia, L. R. 2 S. C. 425; *In re Guthrie & Co.*, Ex parte Bank of New Zealand, L. R. 2 S. C. (N. Z.) 429.

21. = N. S. W. § 18, except: "or cautionary obligation" is omitted in both places where it occurs; "of the transactions of which" is substituted for "of whose transactions".

Relations of partners to one another.

22. = N. S. W. § 19, except: "express" is substituted for "expressed". — E. § 19; N. S. W. 19; V. 23; T. 24; S. A. 19; Q. 22; W. A. 29. — Where a partnership agreement contained certain provisions which were to take effect if the partnership should be dissolved in a certain manner, and subsequently an agreement for dissolution was entered into which contained a complete scheme for dissolution, it was held that the provisions of the original agreement should not be read into the second agreement. — *Owen v. Rayner*, 8 Gaz. L. R. (N. Z.) 64.

23. = N. S. W. § 20, except: in 2. "is" is omitted before "necessary"; in 3. "purchase other land" is substituted for "purchase other lands".

24. = N. S. W. § 21.

Conversion into personal estate of land held as partnership property. 25. Where land has become partnership property, it shall, unless the contrary intention appears, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal and not real estate. — E. § 22; N. S. W. 22; V. 26; T. 27; S. A. 22; Q. 25; W. A. 32. — For an application of the principle of this section, see *Cameron v. Cameron*, 1 C. A. (N. Z.) 24.

26. = N. S. W. § 23. — E. § 23; N. S. W. 23; V. 27; T. 28; S. A. 23; Q. 26; W. A. 33. — For a case involving the application of the law as it existed prior to this Act, see *King v. McGavin et al.*, 4 J. R. N. S. S. C. (N. Z.) 44. Also, *King v. McGavin*, 3 J. R. N. S. S. C. (N. Z.) 30. For the present practice, see *McCallum v. Konig*, 17 L. R. (N. Z.) 156.

27. = N. S. W. § 24, except: "express or implied" is substituted for "expressed or implied". In 3. "five" is substituted for "seven"; and "advance" for "advances"; in 8. "the" is inserted before "partners"; in 9. "is" is substituted for "be". — E. § 24; N. S. W. 24; V. 28; T. 29; S. A. 24; Q. 27; W. A. 34. — Where several persons are partners in indivisible property, and one of them incurs liability for the common benefit, he is entitled to be indemnified by the others, and the shares of those who are unable to pay must be paid by those who are. — *Creditor's Trustee of Henderson v. Diver*, L. R. 1 S. C. (N. Z.) 369.

28. = N. S. W. § 25.

29. = N. S. W. § 26, except: in (2) "in writing" is inserted after "notice".

30. = N. S. W. § 27. — E. § 27; N. S. W. 27; V. 31; T. 32; S. A. 27; Q. 30; W. A. 38. — For a case where an opposite result was reached, decided before the Act, see *Troutbeck v. Richardson*, O. B. & F. (C. A.) (N. Z.) 80.

31. = N. S. W. § 28.

32. = N. S. W. § 29, except: in 1. "from any use" is substituted for "for any use". — E. § 29; N. S. W. 29; V. 33; T. 34; S. A. 29; Q. 32; W. A. 40. — Where a partnership business is sold, and one of the partners receives a special benefit from the purchaser, and this fact is openly and frankly stated and discussed between the purchaser, the partner receiving the benefit, and an agent for the other partners, and the sale is determined upon on that basis,

the partner receiving the special benefit is entitled to retain the same as against the other partners. — *Loughnan v. Dalgety & Co. Ltd.*, 16 L. R. (N. Z.) 299. T. was managing partner in New Zealand of G. & Co. Certain debtors of the firm made an assignment of their estate for the benefit of their creditors. T. was one of the trustees, and under a provision of the deed of assignment giving the trustees the right to purchase the assigned property, became purchaser of the whole estate on his own behalf, through the agency of a third person. The stock so purchased was not in itself suitable for the business of G. & Co., but when made up with goods that the firm had in stock, could have been sold by them in their ordinary course of business. Held, that T. must account to his partners for the profits made on the resale of the goods so purchased by him, (per Stout, C. J.) on the ground that the resale competed with the firm's business, and (per Williams, J.) on the ground that T.'s right to purchase existed for the benefit of his firm, and that the transaction came within this section of the Partnership Act. — *Gibson v. Tyree*, 20 L. R. (N. Z.) 278. See also, *Gibson v. Tyree* (No. 2), 20 L. R. (N. Z.) 562. — Where a partnership at will is temporarily suspended the partners may enter into contracts in their own name in regard to transactions which would have been within the scope of the partnership business, without incurring any liability to their partners for profits. They remain accountable, however, for any benefit derived by them from any use of the partnership property in respect of such transactions. — *Fleming v. McKechnie*, 25 L. R. (N. Z.) 216; 8 Gaz. L. R. (N. Z.) 424.

33. = N. S. W. § 30. — E. § 30; N. S. W. 30; V. 34; T. 35; S. A. 30; Q. 33; W. A. 41. — See the cases in the note to the preceding section.

34. = N. S. W. § 31, except: in 1. "or redeemable charge" is omitted.

Dissolution of partnership and its consequences.

35. = N. S. W. § 32. — E. § 32; N. S. W. 32; V. 36; T. 37; S. A. 32; Q. 35; W. A. 43. — A partnership entered into under an agreement that it is to continue so long as the business is profitable is not a mere partnership at will, and is not entered into for an "undefined term" within the meaning of this section. — *Wilson v. Kirkcaldie*, 13 L. R. (N. Z.) 286.

36—37. = N. S. W. § 33—34.

38. = N. S. W. § 35, except: in the opening sentence "declare" is substituted for "decree"; in a) "where a partner is found lunatic by inquisition" is substituted for "when a partner has been declared in accordance with law to be of unsound mind and incapable of managing his affairs"; in d) "partner suing" is substituted for "party suing". — E. § 35; N. S. W. 35; V. 39; T. 40; S. A. 35; Q. 38; W. A. 46. — Where in a suit for dissolution of a partnership one of the parties has consented to a decree declaring the partnership dissolved as from a certain date, he is estopped from showing that the partnership was dissolved prior to that date. — *Connor v. McKay*, L. R. 1 C. A. (N. Z.) 169. — Where an action for dissolution is rendered necessary by the negligence or misconduct of one of the partners, he will be ordered to pay the costs up to the trial, so far as they have been occasioned by his misconduct. — *Gay v. Peary*, 25 L. R. (N. Z.) 285.

39. = N. S. W. § 36, except: in 1. "where" is substituted for "when"; in 2. "and in at least one newspaper circulating in Sydney and one newspaper circulating in the district in which the firm carries on business" is omitted.

40. = N. S. W. § 37, except: "necessary or proper acts" is substituted for "necessary and proper acts".

41. = N. S. W. § 38.

42. = N. S. W. § 39, except: "partners of the firm" is substituted for "partners to the firm". — E. § 39; N. S. W. 39; V. 43; T. 44; S. A. 39; Q. 42; W. A. 50. — Where there is any partnership property the creditors of the firm can not participate in the separate estate of the partners until the separate creditors have been paid in full. — *In re Julius Siebert*, 6 L. R. (N. Z.) 257.

43. = N. S. W. § 40, except: "thereof" is inserted before "as it thinks just". — E. § 40; N. S. W. 40; V. 44; T. 45; S. A. 40; Q. 43; W. A. 53. — For a case illustrating the principle, see *Wilson v. Kirkcaldie*, 13 L. R. (N. Z.) 286.

44. = N. S. W. § 41.

45. = N. S. W. § 42, except: in 1. "surviving or continuing partners" is substituted for "surviving and continuing partners"; "representative" is substituted for "representatives"; "five" is substituted for "six". — E. § 42; N. S. W. 42; V. 46; T. 47; S. A. 42; Q. 45; W. A. 55. — The profit on goods to arrive may constitute part of the good-will of a business in which an outgoing partner is entitled to share. — *In re Tothill, Watson & Co.*, 22 L. R. (N. Z.) 775; 3 Gaz. L. R. (N. Z.) 442.

46. = N. S. W. § 43.

47. = N. S. W. § 44, except: in 2. b) "from the firm" is substituted for "by the firm". — E. § 44; N. S. W. 44; V. 48; T. 49; S. A. 44; Q. 47; W. A. 57. — Where partnership property, consisting of real property, was, after dissolution, let pending its realisation, *semble*, that the rents received were accretions of capital, and were not divisible as profits. — *Gavin, Gibson & Co. Ltd. et al. v. Tyree*, 18 L. R. (N. Z.) 705.

Part II. Special Partnership.¹⁾

Part I not to affect special partnerships. 48. Part I: of this Act shall not affect special partnerships except in so far as the general law relating to partners is declared by the succeeding provisions hereof to be applicable to special partnerships.

Special partnerships may be formed, except for banking and insurance. 49. Special partnerships may be formed for the transaction of agricultural, mining, mercantile, mechanical, manufacturing, or other business, by any number of persons, upon the terms and subject to the conditions and liabilities hereinafter prescribed: Provided that nothing herein shall authorise any such partnership for the purpose either of banking or insurance.

General and special partners, and their liabilities. 50. Every special partnership may consist of general partners, who shall be jointly and severally responsible as general partners are now by law, and of persons, to be called special partners, who shall contribute to the common stock specific sums in money as capital, beyond which they shall not be responsible for any debt of the partnership except in cases hereinafter provided for.

Certificates to be signed by the partners, specifying names, capital, etc. 51. All the persons forming any special partnership shall, before commencing business, sign a certificate containing: a) The style of the firm under which the partnership is to be conducted; b) The names and places of residence of all the partners, distinguishing the general from the special partners; c) The amount of capital which each special partner contributes, and also (if any) the amount contributed by the general partners to the common stock; d) The general nature of the business to be transacted; e) The principal or only place at which it is to be transacted; and f) the time when such partnership is to commence, and when it is to terminate. — E. § 8; Q. 55.

Style of partnership. 52. Such style or firm shall contain the names of general partners only, or the name of one such partner, with (in either case) the addition of the words "and Company", and the general partners only shall transact the business of the partnership. — Q. 56.

When a special partner shall be deemed a general partner. 53. If in carrying on such business, or in any contract connected therewith, the name of any special partner shall be used with his consent or privity, or if he personally makes any contract respecting the concerns of the partnership, he shall be deemed to be a general partner with respect to the contract or matter in which his name has been so used, or as to which he so contracted. — E. § 6 (1); Q. 56.

Certificates to be acknowledged and registered. Place of registration. 54. 1. A special partnership shall not be deemed formed until such certificate as aforesaid is acknowledged by each partner before some Justice, and registered in the office of the Supreme Court in a book to be kept for that purpose by the Registrar of such Court, open to public inspection. 2. Every such certificate shall be so registered at the Supreme Court office at or nearest to the principal or only place at which the business of the partnership is to be transacted. — E. § 8; Q. 57.

If false statement in certificate, all partners to be liable as general partners. 55. If any false statement is made in any such certificate, all the persons interested in the special partnership shall be liable for all the engagements thereof as general partners: Provided that no clerical error or matter not of substance shall be deemed false within the meaning of this section unless some person is prejudiced thereby, in which case the special partners shall be liable to the person so prejudiced. — E. § 12; Q. 57.

Copy of certificate to be published. 56. 1. A copy of such certificate shall be published once at least in the *Gazette* and twice in some newspaper published at the intended principal place of business of the special partnership, or at the nearest place to such place of business where a newspaper is published. 2. If such publication be not so made the partnership shall be deemed general. — E. § 10; Q. 58.

¹⁾ The references in this Part are to (E.) the English *Limited Partnerships Act, 1907*, (7 Edw. 7, c. 24), to the Limited Partnership Acts of Tasmania and Western Australia and to (Q.) the part of the *Queensland Mercantile Act, 1867*, (31 Vic. No. 36), relating to special partnerships.

Duration of partnerships prescribed. 57. A special partnership shall not be entered into for a longer period than seven years, but any such partnership may be renewed at the end of that period, or at the termination of any shorter period for which it was formed. — Q. 59.

Certificate to be signed on renewal. 58. 1. Upon every renewal or continuation beyond the time originally agreed on for the duration of a special partnership, a certificate thereof shall be signed, acknowledged, registered, and published in like manner as the original certificate. 2. Every partnership renewed or continued otherwise than in conformity with the provisions of this section shall be deemed general. — Q. 60.

Capital stock not to be withdrawn, etc. 59. During the continuance of any special partnership, no part of the certified capital thereof shall be withdrawn, nor shall any division of interest or profit be made so as to reduce such capital below the aggregate amount stated in the certificate. — E. § 4 (3); Q. 61.

Special partners liable to refund capital withdrawn in certain cases. How such sums may be recovered. 60. 1. If any part of such capital is withdrawn, or any such division is made, so that at any time during the continuance or at the termination of the special partnership the assets are insufficient to pay the partnership debts, the special partners shall be severally liable to refund every sum received by them respectively in diminution of such capital or by way of such interest or profit. 2. All such sums may be recovered as money had and received by them respectively to the use of the general partners, and may, in the case of any judgment being obtained against the general partners, be recovered by the plaintiff against the special partners, or any of them, by process of execution issued under such judgment by leave of the Supreme Court. — E. § 4 (3); Q. 61.

Suits to be by and against general partners. 61. All suits respecting the business of any special partnership shall be prosecuted by and against the general partners only, except in the cases in which it is provided by this Act that special partners shall or may be deemed general partners, in which cases every special partner who becomes liable as a general partner may be joined or not in the action as a defendant, at the discretion of the party suing.

Dissolution, how effected. 62. A dissolution of a special partnership shall not take place, except by operation of law, before the time specified in the certificate, unless a notice of such dissolution is signed, acknowledged, registered, and published in like manner as the original certificate.

Cases not specially provided for. 63. In all cases not hereinbefore otherwise provided for all the members of a special partnership shall be subject to the liabilities and entitled to the rights of general partners.

Accounting. 64. The general partners shall be liable to account to each other and to the special partners for their management of the partnership concerns as other partners are by law.

Frauds by partners. 65. Every partner guilty of any fraud in the affairs of the partnership shall be liable civilly to the party injured to the extent of his damage, and shall also be liable to an indictment for a crime punishable by fine or imprisonment, or both, at the discretion of the Court by which he is tried.

Books of account to be kept, and to be open to inspection. 66. If the general partners do not at all times cause regular books of account to be kept, or do not have the same open at all reasonable times to the inspection of the special partners, such special partners shall be entitled to have the special partnership dissolved and the accounts thereof taken by the Supreme Court.

As to liability of special partners if books not kept or incorrectly kept. 67. If the books of any special partnership are, with the knowledge or privity of the special partners or any of them, kept incorrectly, or contain any false or deceptive entries, whereby the ascertainment of the matters mentioned in section fifty-nine and sixty hereof are or may be affected, the certified capital of such special partners, or such one or more of them having such knowledge or privity, shall as against creditors be deemed to have been withdrawn, and they or he shall be liable accordingly under the provisions of the said section sixty. — Q. 68.

*Schedule.**Enactment consolidated.*

1880, No. 12. The Mercantile Law Act, 1880: Sections 59 to 77.
 1891, No. 6. The Partnership Act, 1891.

Companies Act.¹⁾

No. 26 of 1908, An Act to consolidate certain enactments of the General Assembly relating to the Incorporation, Regulation, and Winding-up of Companies and other Associations

Short title. Enactments consolidated. Savings. 1. 1. The short title of this Act is *The Companies Act, 1908*. 2. This Act is a consolidation of the enactments mentioned in the first Schedule hereto, and with respect to those enactments the following provisions shall apply: a) All offices, appointments, rules, regulations, registers, registrations, certificates, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated; b) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act. 5.²⁾ This Act is divided into Parts, as follows: Part I. Preliminary (Sections 2 to 12). Part II. Constitution and Incorporation of Companies (Sections 13 to 28). Part III. Distribution of Capital, and Liability of Members of Companies (Sections 29 to 68). Part IV. Management and Administration of Companies (Sections 69 to 163). Part V. Private Companies (Sections 164 to 172). Part VI. Winding-up of Companies (Sections 173 to 267). Part VII. Application of Act to Companies registered under former Acts (Sections 268 to 271). Part VIII. Companies authorised to register under this Act (Sections 272 to 296). Part IX. Companies incorporated outside New Zealand (Sections 297 to 321). Part X. Miscellaneous Provisions (Sections 322 to 325). Part XI. Special as to Fire and Marine Insurance Companies (Sections 326 to 339). Part XII. Mining Companies (Sections 340 to 371). — E. § 295; N. S. W. a. (No. 40 of 1899) 1; V. a. (No. 1074) 1; T. a. (33 Vic. No. 22) 1, 5; S. A. a. (No. 557) 1, 2; Q. e. (27 Vic. No. 4) 1, 4; W. A. a. (56 Vic. No. 8) 1, 2.

Part I. Preliminary.

Interpretation. 2. In this Act, if not inconsistent with the context, “Company” means a company or association incorporated or registered under this Act, and includes private company. “Court” means the Supreme Court, and includes a Judge thereof. “Debenture” includes debenture stock. “Directors” means the persons having the general control of the business or affairs of a company; and “director” includes any person occupying the position of director, by whatever name called. “Manager” includes any officer of a company, however designated, having the management of the business or affairs of a company under the control of directors, but does not include a person who is merely secretary. “Private company” means a company registered under Part V. of this Act. “Prospectus” means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares or debentures of a company. “Registrar” means the Registrar of Companies under this Act. “Regulations” includes Royal charters, letters patent, articles of association, deeds of settlement, and by-laws, and includes regulations as originally framed or as altered by special resolution. — E. §§ 3, 4, 5, 15, 69, 285. For meaning of terms in the other Acts see texts.

Act not to apply to banks. 3. With the exception of Part IX. and also of the provisions relating to branch registers, this Act shall not apply to persons

¹⁾ The references in the notes are to the English Companies (Consolidation) Act, 1908, and to the Australian Acts reprinted *supra*. — ²⁾ *Sic*; obviously “3”.

associated together for the purpose of banking within New Zealand, but the whole Act shall apply to persons associated together for the purpose of carrying on banking at any place out of New Zealand. — E. § 1; N. S. W. a. (No. 40 of 1899) 4; V. a. (No. 1074) 4; T. a. (33 Vic. No. 22) 4; S. A. a. (No. 557) 5; Q. e. (27 Vic. No. 4) 3; W. A. a. (56 Vic. No. 8) 5.

Insurance companies to be unlimited. 4. Except as provided by Part XI. of this Act, no company that carries on the business of insurance, whether or not in common with any other business, shall be registered with limited liability. — N. S. W. a. (No. 40 of 1899) 3; V. a. (No. 1074) 3; T. a. (33 Vic. No. 22) 3; S. A. a. (No. 557) 5; Q. e. (27 Vic. No. 4) 2; W. A. a. (56 Vic. No. 8) 5.

Partnerships not to exceed ten persons. 5. 1. No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some Act of the Imperial Parliament, or of the General Assembly, or by Royal Charter, or Letters Patent. 2. The members of any such company, association, or partnership that is not registered under this Act, or formed in pursuance of some Act of the Imperial Parliament or of the General Assembly, or by a Royal Charter, or Letters Patent, shall be jointly and severally liable for the whole debts of such company, association, or partnership; and any of such members may be sued for any of such debts without the joinder in the action of any other member. 3. Any such company, association, or partnership as aforesaid may be wound up under the provisions of this Act. — E. § 1; N. S. W. a. (No. 40 of 1899) 4; V. a. (No. 1074) 4; T. a. (33 Vic. No. 22) 4; S. A. a. (No. 557) 7; Q. u. (Vic. No. 21) 1, e. (27 Vic. No. 4) 3; W. A. a. (56 Vic. No. 8) 7.

Registration Office. 6. 1. The Governor may from time to time: a) Appoint a Registrar of Companies; b) Determine the place or places at which offices for the registration of companies are to be established, and define districts for the purposes of this Act; c) Appoint Assistant Registrars as he thinks fit; d) Appoint such officers and clerks as he thinks necessary for the registration of companies under this Act; e) Make such regulations as he thinks fit prescribing the duties and powers of the Registrar, Assistant Registrars, officers, and clerks as aforesaid; f) Direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies. 2. There shall be paid to the Registrar, and to any Assistant Registrar, officer, or clerk employed in the registration of companies, such salary as the Governor directs, out of any moneys duly appropriated by Parliament for the purpose. 3. The Registrar shall keep at each office for the registration of companies a register, in which there shall be recorded all matters required by this Act or by any regulations made under this Act to be recorded by the Registrar. — E. § 15, 243; N. S. W. a. (No. 40 of 1899) 166; V. a. (No. 1074) 17; T. a. (33 Vic. No. 22) 206; S. A. a. (No. 557) 8; Q. e. (27 Vic. No. 4) 172; W. A. a. (56 Vic. No. 8) 8.

Powers of Assistant Registrars. 7. 1. Within a district wherein an Assistant Registrar is appointed, any act or duty that the Registrar is authorised or required to do or perform under this Act may be done or performed by the Assistant Registrar in that district, provided such act or duty is within the prescribed duties of such Assistant Registrar. 2. Until regulations are made prescribing the duties and powers of Assistant Registrars, every Assistant Registrar shall have and may exercise all the duties and powers of a Registrar. — See notes to § 6, *supra*.

Fees as in Table C where capital divided into shares. Fees as in Table D where capital not divided into shares. Miscellaneous fees as in Table E. 8. 1. There shall be paid to the Registrar: a) By a company having a capital divided into shares, in respect of the several matters mentioned in Table C in the second Schedule hereto, the several fees therein specified; b) By a company not having a capital divided into shares, in respect of the several matters mentioned in Table D in the second Schedule hereto, the several fees therein specified; c) In respect of the several matters mentioned in Table E in the second Schedule hereto, the several fees therein specified. 2. The Governor may from time to time, by Order in Council, direct that smaller fees shall be paid in respect of any of the matters specified in Tables C or D respectively. — E. § 244; N. S. W. a. (No. 40 of 1899) 166, 179; V. a. (No. 1074) 17; T. a. (33 Vic. No. 22) 17; S. A. a. (No. 557) 250; Q. e. (27 Vic. No. 4) 172 (4); W. A. a. (56 Vic. No. 8) 249.

Fees payable in advance. 9. Where the Registrar or any other officer is empowered by this Act to do any act for which a fee is payable, he may refuse to do such act until such fee is paid.

Application of fees. 10. All fees paid to the Registrar under this Act shall be paid into the Public Account and form part of the Consolidated Fund. — See notes to § 8, *supra*.

Power to inspect documents, etc. Power to require certified copies of documents, etc. 11. 1. Every person may inspect any documents lodged with the Registrar on payment of the fee prescribed for each inspection. 2. Any person may, on payment of the prescribed fee, require a certificate of the incorporation of any company, or a copy of or extract from any document or any part of any document, to be given or certified by the Registrar or Assistant Registrar respectively. — E. § 243; N. S. W. a. (No. 40 of 1899) 166; V. a. (No. 1074) 19; T. a. (33 Vic. No. 22) 206 (4); S. A. a. (No. 557) 21, 202; Q. e. (27 Vic. No. 4) 172 (5); W. A. a. (56 Vic. No. 8) 204.

Evidence of documents. 12. 1. Any certificate of the incorporation of a company given by the Registrar shall be received in evidence as if it were the original certificate. 2. Any copy of or extract from any document or part of a document kept and registered at any office for the registration of companies in New Zealand shall, if duly certified to be a true copy under the hand of the Registrar, without proof of the signature of the Registrar, be received in evidence in all proceedings, civil or criminal, as of equal validity with the original document. — E. § 243; N. S. W. a. (No. 40 of 1899) 17; V. f. (No. 1482) 52 (1); T. c. (59 Vic. No. 19) 27; S. A. a. (No. 557) 236; W. A. a. (56 Vic. No. 8) 236.

Part II. Constitution and Incorporation of Companies.

Memorandum of association.

Mode of forming company. 13. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability. — E. § 2; N. S. W. a. (No. 40 of 1899) 5; V. a. (No. 1074) 5; T. a. (33 Vic. No. 22) 6; S. A. a. (No. 557) 9; Q. c. (27 Vic. No. 4) 5; W. A. a. (56 Vic. No. 8) 9. — A limited company empowered by its memorandum of association to purchase the undertaking of another company, association or person, or any share or interest therein, is authorized to take shares in or become a shareholder of another company. — *New Zealand Flour Millers' Cooperative Association, Ltd. v. Timaru Milling Co., Ltd.*, 20 L. R. (N. Z.) 650.

Mode of limiting liability of members. 14. The liability of the members of a company formed with limited liability may, according to the memorandum of association, be limited either to the amount (if any) unpaid on the shares respectively held by them, or to such amount as the members respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up. — E. § 2; N. S. W. a. (No. 40 of 1899) 6; V. a. (No. 1074) 6; T. a. (33 Vic. No. 22) 7; S. A. a. (No. 557) 10; Q. c. (27 Vic. No. 4) 6; W. A. a. (56 Vic. No. 8) 10.

Memorandum of association of company limited by shares. 15. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares (hereinafter referred to as "a company limited by shares"), the memorandum of association shall contain the following things, that is to say: a) The name of the proposed company, with the addition of the word "Limited" as the last word in such name; b) The objects for which the proposed company is to be established; c) A declaration that the liability of the members is limited; d) The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount. — E. § 3; N. S. W. a. (No. 40 of 1899) 7; V. a. (No. 1074) 7; T. a. (33 Vic. No. 22) 8; S. A. a. (No. 557) 11 (1), 12; Q. c. (27 Vic. No. 4) 7; W. A. a. (56 Vic. No. 8) 11 (1), 13. — *Cp. third Schedule, Form A. — ULTRA VIRES.* — Where a contract is partly *ultra vires*, and the terms of the agreement are not severable, the whole contract is void. — *New Zealand Flour Millers' Cooperative Association, Ltd. v. Timaru Milling Co., Ltd.*, 20 L. R. (N. Z.) 650. Persons dealing with a company are not bound to ascertain whether the particular transaction is a violation of some rule of internal management of the company. — *Common, Shelton, & Co., Ltd. v. Timaru Milling Co., Ltd.*, 18 L. R. (N. Z.) 321. Nor whether persons ostensibly directors or managers have been duly appointed. — *Bleir v. Duntroon & Hakateramea Railway Co., Ltd.*, L. R. 5 S. C. (N. Z.) 309. And violations of rules of internal management may be ratified by the shareholders. — *Mac-*

dougall v. Duthie, L. R. 3 S. C. (N. Z.) 334. See also *In re New Zealand Native Land Settlement Co., Ltd.*, 6 L. R. (N. Z.) 549; *New Zealand Native Land Settlement Co. v. Rhodes' Trustees*, 7 L. R. (N. Z.) 19; *Rewa Cooperative Dairy Co. v. Lonergan*, 25 L. R. (N. Z.) 540.

Memorandum of association of company limited by guarantee. 16. 1. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up (hereinafter referred to as "a company limited by guarantee"), the memorandum of association shall contain the following things, that is to say: a) The name of the proposed company, with the addition of the word "Limited" as the last word in such name; b) The objects for which the proposed company is to be established; c) A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up while he is a member, or within one year after he has ceased to be a member, for payment of the debts and liabilities of the company contracted before he ceased to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount. 2. Where a company limited by guarantee desires to have a capital divided into shares, the memorandum of association shall state, in addition to the matters hereinbefore mentioned, the amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount. 3. A company limited by guarantee, whether formed before or after the passing of this Act, may, by special resolution, if authorised so to do by its regulations, modify the conditions contained in its memorandum of association by providing for a capital divided into shares. 4. The resolution effecting such modification shall state the amount of such capital and the number and nominal amount of the shares into which it is divided. 5. No company limited by guarantee shall be capable of having a capital divided into shares unless its memorandum of association as originally framed or as altered by special resolution so provides; but this subsection shall not apply to any company limited by guarantee incorporated before the passing of this Act and having before the passing of this Act by its articles of association provided for a capital divided into shares. 6. In the case of a company limited by guarantee and not having a capital divided into shares, every provision in the memorandum or articles of association, or in any resolution of the company, purporting to give any person a right to participate in the profits of the company available for dividend otherwise than as a member shall be void; but nothing herein shall affect the power of a company to issue debentures carrying a rate of interest varying with the profits, or shall affect the powers of any company incorporated before the passing of this Act. 7. Except where otherwise expressly provided, all the provisions of this Act relating to the powers, rights, duties, and obligations of a company limited by shares, and of the members, directors, and officers of such a company, shall apply to a company limited by guarantee and having a capital divided into shares. — E. § 4; N. S. W. a. (No. 40 of 1899) 8; V. a. (No. 1074) 10; T. a. (33 Vic. No. 22) 9; Q. e. (27 Vic. No. 4) 8. — Cp. third Schedule, Forms B and C. See also § 22, 43, 66 (c), 245.

Memorandum of association of an unlimited company. 17. Where a company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as "an unlimited company"), the memorandum of association shall contain the following things, that is to say, — a) The name of the proposed company; b) The objects for which the proposed company is to be established. — E. § 5; N. S. W. a. (No. 40 of 1899) 9; V. a. (No. 1074) 11; T. a. (33 Vic. No. 22) 10; S. A. a. (No. 557) 11 (2); Q. e. (27 Vic. No. 4) 9; W. A. a. (56 Vic. No. 8) 11 (2). — Cp. third Schedule, Form D.

Shares to be taken by subscribers. 18. In the case of every company having a capital divided into shares, each subscriber to the memorandum of association shall write opposite to his name the number of shares he takes, and shall take not less than one share. — See notes to § 15, *supra*.

Stamp, signature, and attestation. 19. The memorandum of association shall bear and be liable to the same stamp duty as if it were a deed not otherwise charged according to the provisions of the *Stamp Duties Act, 1908*, and shall be signed by each subscriber in the presence of and be attested by one witness at the least; and that attestation shall be a sufficient attestation, whether the signature is

made in New Zealand or not. — E. § 6; N. S. W. a. (No. 40 of 1899) 10; V. a. (No. 1074) 12; T. a. (33 Vic. No. 22) 11; S. A. a. (No. 557) 14; W. A. a. (56 Vic. No. 8) 15.

Effect of memorandum of association. 20. 1. The memorandum of association shall, when registered, bind the company and the members thereof to the same extent as if each member had duly executed the same as a deed and there were in the memorandum a covenant with the company on the part of himself, his executors and administrators, to observe all the conditions of such memorandum, subject to the provisions of this Act. 2. Save as provided by this Act, no alteration shall be made by any company in the conditions contained in its memorandum of association. — See notes to § 19, *supra*.

Member defined. 21. The subscribers of the memorandum of association of any company shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of a company, and whose name is entered on the register of members, shall be deemed to be a member of the company. — E. § 24; N. S. W. a. (No. 40 of 1899) 18; V. a. (No. 1074) 24; T. a. (33 Vic. No. 22) 23; S. A. a. (No. 557) 26; Q. e. (27 Vic. No. 4) 22; W. A. a. (56 Vic. No. 8) 27.

Articles of association.

Regulations to be prescribed by articles of association. 22. 1. The memorandum of association may in the case of a company limited by shares, and shall in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as such subscribers deem expedient. 2. The articles shall be expressed in separate paragraphs numbered arithmetically. 3. They may adopt all or any of the regulations in Table A in the second Schedule hereto. 4. They shall, in the case of an unlimited company having a capital divided into shares, state the amount of capital with which the company proposes to be registered; and in the case of a company, whether limited by guarantee or unlimited, not having a capital divided into shares, state the number of members with which the company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration. — E. §§ 10, 12; N. S. W. a. (No. 40 of 1899) 12; V. a. (No. 1074) 14; T. a. (33 Vic. No. 22) 14; S. A. a. (No. 557) 15; Q. e. (27 Vic. No. 4) 14; W. A. a. (56 Vic. No. 8) 16.

Application of Table A. 23. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in Table A in the second Schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association and such articles had been duly registered. — E. § 11; N. S. W. a. (No. 40 of 1899) 13; V. a. (No. 1074) 15; T. a. (33 Vic. No. 22) 15; S. A. a. (No. 557) 16; Q. e. (27 Vic. No. 4) 14; W. A. a. (56 Vic. No. 8) 17.

Stamp duty, signature, and effect of articles of association. 24. 1. The articles of association shall be printed. 2. They shall bear and be liable to the same stamp duty as if they were contained in a deed not otherwise charged according to the provisions of the *Stamp Duties Act, 1908*. 3. They shall be signed by each subscriber in the presence of and be attested by one witness at the least; and such attestation shall be a sufficient attestation, whether the signature is made in New Zealand or not. 4. When registered, they shall bind the company and the members thereof to the same extent as if each member had duly executed the same as a deed, and there were in such articles a covenant with the company on the part of himself, his executors and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this Act. 5. All moneys payable by any member to the company in pursuance of any of the conditions or regulations of the company shall be deemed to be a debt due from such member to the company. — E. §§ 12, 14; N. S. W. a. (No. 40 of 1899) 14; V. a. (No. 1074) 16; T. a. (33 Vic. No. 22) 16; S. A. a. (No. 557) 18; Q. e. (27 Vic. No. 4) 15; W. A. a. (56 Vic. No. 8) 19.

Copies of memorandum and articles to be given to members. 25. A copy of the memorandum of association, having annexed thereto the articles of association

(if any), shall be forwarded to every member, at his request, on payment for each copy of the sum of two shillings or such less sum as may be prescribed by the company; and if any company commits any breach of this section it shall for each offence be liable to a fine not exceeding five pounds. — E. § 18; N. S. W. a. (No. 40 of 1899) 233; V. a. (No. 1074) 20; T. a. (33 Vic. No. 22) 19; S. A. a. (No. 557) 22; Q. e. (27 Vic. No. 4) 18; W. A. a. (56 Vic. No. 8) 23.

Incorporation and name of company.

Memorandum and articles of association to be registered. Effect of registration. Certificate conclusive. Incorporation of company. 26. 1. The memorandum of association and the articles of association (if any) shall be delivered to the Registrar, who shall retain and register the same upon payment of the prescribed fees. 2. A statutory declaration by the solicitor (if any) engaged in the formation of the company, or the directors (if any), or the subscribers of the memorandum of association, that all or any of the requirements of this Act in respect of registration and of matters precedent or incidental thereto have been complied with shall be produced to the Registrar, who may accept the same as sufficient evidence of such compliance. 3. Upon the registration of the memorandum of association and of the articles of association, where such articles are required by this Act or by desire of the parties to be registered, the Registrar shall issue a certificate under his hand that the company is incorporated, and, in the case of a limited company that the company is limited. 4. Every certificate of incorporation, whether issued before or after the coming into operation of this Act, shall be conclusive evidence that all statutory requirements in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act or under any Act heretofore in force, as the case may be. 5. Upon the issue of such certificate the subscribers of the memorandum of association, together with all other persons who from time to time become members of the company, shall, as from the date of incorporation mentioned in the certificate, be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned. — E. §§ 15, 16, 17; N. S. W. a. (No. 40 of 1899) 15, 16, 17; V. a. (No. 1074) 17, 18, f. (No. 1482) 164; T. a. (33 Vic. No. 22) 17, 18, c. (59 Vic. No. 19) 27; S. A. a. (No. 557) 19, 20, 91, 250; Q. e. (27 Vic. No. 4) 16, 17; W. A. a. (56 Vic. No. 8) 20, 21, 93, 250.

Prohibition against identity of names in companies. 27. No company shall be registered under a name identical with that by which an existing company is already registered, or so nearly resembling the same as to be calculated to deceive, except where such existing company is in the course of being dissolved, and testifies its consent in such manner as the Registrar requires. — E. § 8; N. S. W. a. (No. 40 of 1899) 234; V. a. (No. 1074) 21; T. a. (33 Vic. No. 22) 20; S. A. a. (No. 557) 23; Q. e. (27 Vic. No. 4) 19; W. A. a. (56 Vic. No. 8) 24.

Name to be changed where likely to mislead. 28. If any company, through inadvertence or otherwise, is without such consent as aforesaid registered by a name identical with that by which an existing company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the Court, change its name in the manner hereinafter provided and with the like effect. — See notes to § 27, *supra*.

Part III. Distribution of Capital, and Liability of Members of Companies. Shares and transfer of shares.

Shares to be numbered. 29. In the case of a company having a capital divided into shares, each share shall be distinguished by its appropriate number. — E. § 22; N. S. W. a. (No. 40 of 1899) 235; V. a. (No. 1074) 23; T. a. (33 Vic. No. 22) 22; S. A. a. (No. 557) 24; Q. e. (27 Vic. No. 4) 21; W. A. a. (56 Vic. No. 8) 25.

Nature of interest in company. 30. The shares or other interest of any member in a company shall be personal property, capable of being transferred in manner provided by the regulations of the company, and shall not be of the nature of real estate. — See notes to § 29, *supra*.

Certificate of shares or stock evidence of title. 31. 1. A certificate under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *prima facie* evidence of the title of the member to the share or shares or stock therein specified. 2. Every such certificate issued by a company shall have printed thereon particulars of any preferential, deferred, qualified, special, or limited rights, privileges, or conditions attaching to the shares or stock specified therein, whether attaching by the company's memorandum or articles of association, or any resolution of the company or of the directors. 3. Every director and manager who issues any certificate in breach of this section is liable to a fine not exceeding fifty pounds. 4. The omission to comply with this section shall not affect the rights of any holder of shares or stock. 5. Where the rights, privileges, or conditions attaching to any shares or stock are varied or altered, the company may by notice to the holders of such shares or stock require any certificate issued in respect thereof to be surrendered to the company, and all such certificates shall be so surrendered accordingly on the issue by the company of fresh certificates showing particulars of the new or varied rights, privileges, or conditions attaching to such shares or stock. 6. Where after such notice is sent to the holder of any shares or stock the certificate is not surrendered, the company shall be under no further liability in respect thereof, or of the shares or stock for which it was issued, than it would have been under had such certificate been surrendered and a fresh certificate as aforesaid issued. — E. § 23; N. S. W. a. (No. 40 of 1899) 238; V. a. (No. 1074) 32; T. a. (33 Vic. No. 22) 33; S. A. a. (No. 557) 32; Q. e. (27 Vic. No. 4) 30; W. A. a. (56 Vic. No. 4) 33.

Transfer by personal representative. 32. A transfer of the share or other interest of a deceased member of a company made by his executor or administrator shall, notwithstanding such executor or administrator may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer. — E. § 29; N. S. W. a. (No. 40 of 1899) 236; V. a. (No. 1074) 25; T. a. (33 Vic. No. 22) 24; S. A. a. (No. 557) 27; Q. e. (27 Vic. No. 4) 23; W. A. a. (56 Vic. No. 8) 28.

Liability of executors as registered holders of shares. 33. Where any deceased person was at the time of his death registered or equitably entitled to be registered as the holder of a share in a company the executor or administrator of such person may, with the consent of the directors of the company, and, where the deceased was equitably entitled as aforesaid, with the consent of the registered holder, be registered as such executor or administrator, and on such registration shall in respect of such share be subject to the same liabilities and no more as he would have been subject to if such share had remained or been in the name of such deceased person.

Transfer may be registered at request of transferor. 34. A company shall, on the application of the transferor of any share or interest in the company, enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry had been made by the transferee. — E. § 28; N. S. W. a. (No. 40 of 1899) 56; V. f. (No. 1482) 169; T. c. (59 Vic. No. 19) 10; S. A. a. (No. 557) Sched. II. A. 18; Q. f. (53 Vic. No. 18) 30; W. A. a. (56 Vic. No. 8) Sched. II. A. 18. — *Seemle*, on a sale of shares not on the Stock Exchange there is no implied contract that the transferor will procure registration of the transfer. — *Forsyth v. Parker*, 15 L. R. (N. Z.) 282.

Transfer of shares on which call unpaid. 35. It shall be the duty of the directors of a company to refuse to register a transfer of any shares on which any call or instalment is due and unpaid, and every director who authorises the registration of a transfer of such shares shall be liable to pay to the company the amount due to the company in respect of such shares at the time of such registration. — N. S. W. a. (No. 40 of 1899) Sched. II. A. 10; V. a. (No. 1074) Sched. II. A. 10; T. a. (33 Vic. No. 22) Sched. I. A. 10; S. A. a. (No. 557) Sched. II. A. 12; Q. e. (27 Vic. No. 4) Sched. I. A. 10; W. A. a. (56 Vic. No. 8) Sched. II. A. 12. — Where registration of the transfer of shares is lawfully refused by the directors the transferor is entitled to recover from the transferee the amount of subsequent calls which he has been compelled to pay. — *Forsyth v. Parker*, 15 L. R. (N. Z.) 282; *Kebbell v. Ollivier*, 19 L. R. (N. Z.) 462.

Shares differing as to liability to calls, etc.

Company may have some shares fully paid and others not. 36. Nothing herein shall be deemed to prevent any company, if authorised by its regulations, from doing all or any of the following things, namely: a) Making arrangements on

the issue of shares for a difference between the holders of such shares in respect of the amount of calls to be paid, and in the time of payment of such calls; b) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him, or without any call having been made; c) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others. — E. § 39; N. S. W. a. (No. 40 of 1899) 54; T. a. (33 Vic. No. 22) 41; S. A. a. (No. 557) 79; Q. f. (53 Vic. No. 18) 27; W. A. a. (56 Vic. No. 8) 81. — See *In re Federal Portland Cement Co.*, 8 N. Z. Gaz. L. R. 203; *In re Wood & Sons, Ltd.*, 25 L. R. (N. Z.) 326.

Reserve capital.

In limited company. 37. A limited company may by special resolution declare that any portion of its capital not already called up shall not be called up except in the event of and for the purposes of the company being wound up; and thereupon it shall not be lawful to call up such portion of capital except in such event and for such purposes. — E. § 59; S. A. a. (No. 557) 78 (1); W. A. a. (56 Vic. No. 8) 80 (1). — Such a company, in so far as the position of shareholders is concerned, is analogous to a guarantee company with a share capital.

Subdivision and consolidation of shares.

Shares may be divided into shares of smaller amount. Proportion between amounts paid and unpaid on shares to be preserved. 38. A company limited by shares, if authorised by its regulations, may by special resolution so far modify the conditions contained in its memorandum of association as: a) To divide its capital, or any part thereof, by subdivision of its existing shares or any of them into shares of smaller amount than is fixed by its memorandum of association; b) To consolidate and divide its capital, or any part thereof, into shares of larger amount than its existing shares; c) To convert its paid-up shares into stock; d) To reconvert such stock into paid-up shares of any denomination: Provided that, in the subdivision of the existing shares, the proportion between the amount paid and the amount (if any) unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived. — E. § 41; N. S. W. a. (No. 40 of 1899) 51 (1) (2); V. a. (No. 1074) 8; T. a. (33 Vic. No. 22) 30; S. A. a. (No. 557) 68 (3), 70, 71; Q. f. (53 Vic. No. 18) 16; W. A. a. (56 Vic. No. 8) 70 (3), 72, 73.

Statement of shares as altered to be embodied in memorandum of association. 39. The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution shall be in accordance with such resolution; and any company that makes default in complying with the provisions of this section is liable to a fine not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who knowingly or wilfully authorises or permits such default is liable to a like fine. — E. § 41; N. S. W. a. (No. 40 of 1899) 51 (3); V. a. (No. 1074) 9; T. a. (33 Vic. No. 22) 31; S. A. a. (No. 557) 72; Q. f. (53 Vic. No. 18) 17; W. A. a. (56 Vic. No. 8) 74.

Company to give notice of consolidation or of conversion of capital into stock. 40. Every company having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or has converted any portion of its capital into stock, or has reconverted such stock into paid-up shares, shall give notice to the Registrar of such consolidation, division, conversion, or reconversion, specifying the shares so consolidated, divided, converted, or reconverted. — E. § 42; N. S. W. a. (No. 40 of 1899) 22; V. a. (No. 1074) 29; T. a. (33 Vic. No. 22) 28; S. A. a. (No. 557) 76; Q. e. (27 Vic. No. 4) 27; W. A. a. (56 Vic. No. 8) 78.

Effect of conversion of shares into stock. 41. Where any company having a capital divided into shares has converted any portion of its capital into stock, and has given notice of such conversion to the Registrar, all the provisions of this Act applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the company, and the list of members to be forwarded to the Registrar, shall show the amount of stock held by each member, instead of the amount of shares and the

particulars relating to shares hereinbefore required. — E. § 43; N. S. W. a. (No. 40 of 1899) 23; V. a. (No. 1074) 30; T. a. (33 Vic. No. 22) 29; S. A. a. (No. 557) 77; Q. e. (27 Vic. No. 4) 28; W. A. a. (56 Vic. No. 8) 79.

Increase of capital or members.

Increase of capital or conversion into stock. 42. Any company limited by shares may, if authorised to do so by its regulations, modify the conditions contained in its memorandum of association so as to increase its capital by the issue of new shares of such amount as it thinks expedient. — E. § 41 (1); N. S. W. a. (No. 40 of 1899) 11; V. a. (No. 1074) 13; T. a. (33 Vic. No. 22) 12; S. A. a. (No. 557) 14 (2), 68 (1); Q. e. (27 Vic. No. 4) 11; W. A. a. (56 Vic. No. 8) 15, 70 (1).

Notice of increase to be sent to Registrar. 43. 1. Where a company has a capital divided into shares, whether such shares have or have not been converted into stock, notice of any increase in such capital beyond the registered capital, and, where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase was authorised, and, in the case of an increase of members, within fifteen days from the time at which such increase of members was resolved on or took place; and the Registrar shall forthwith record the amount of such increase of capital or members. 2. If such notice is not given within the period aforesaid, the company in default shall be liable to a fine not exceeding five pounds for every day during which such default continues and every director and manager of the company who knowingly and wilfully authorises or permits such default is liable to a like fine. — E. § 44; N. S. W. a. (No. 40 of 1899) 24; V. a. (No. 1074) 35; T. a. (33 Vic. No. 22) 36; S. A. a. (No. 557) 75; Q. e. (27 Vic. No. 4) 33; W. A. a. (56 Vic. No. 8) 77.

Reduction of capital.

Power of company to reduce capital. Company to add “and reduced” to its name. Company to apply to the Court for an order confirming reduction. 44. 1. Any company limited by shares may, if authorised so to do by its regulations, by special resolution modify the conditions contained in its memorandum of association so as to reduce its capital, including paid-up capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court has been registered by the Registrar as hereinafter mentioned. 2. The company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court appoints, the words “and reduced” as the last words in its name; and these words shall, until such date, be deemed to be part of the name of the company. 3. The company may apply to the Court by petition for an order confirming the reduction, and on the hearing of the petition the Court, if satisfied that, with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the resolution has been obtained, or his debt or claim has been discharged or has been determined or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit. — E. §§ 46, 47, 48; N. S. W. a. (No. 40 of 1899) 39—42; V. f. (No. 1482) 88, 89; T. d. (60 Vic. No. 3) 3—5; S. A. a. (No. 557) 68 (5), 69, 70 (1) (6); Q. f. (53 Vic. No. 18) 4—6; W. A. a. (56 Vic. No. 8) 70 (5), 71, 72 (1) (6).

Creditors may object to reduction. List of objecting creditors to be settled by the Court. 45. 1. Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company shall be entitled to object to the proposed reduction and to be entered in the list of creditors so entitled to object. 2. The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices appointing a certain day or days within which creditors of the company who are not entered on the list are to claim to be entered thereon, or to be excluded from the right of objecting to the proposed reduction. — E. § 49 (1, 2); N. S. W. a. (No. 40 of 1899) 43 (1) (3); V. f. (No. 1482) 90; T. d. (60 Vic. No. 3) 7; S. A. a. (No. 557) 70 (3) (5); Q. f. (53 Vic. No. 18) 9; W. A. a. (56 Vic. No. 8) 72 (3) (5).

Court may dispense with consent of creditor on security being given for his debt. 46. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction the Court may (if it thinks fit) dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court directs, a sum of such amount as is hereinafter mentioned, that is to say: a) If the company admits such debt or claim, or, though not admitting the same, is willing to set apart and appropriate the full amount thereof, then the full amount of the debt or claim shall be set apart and appropriated; b) If the company does not admit and is not willing to set apart and appropriate the full amount of such debt or claim, or if the amount is contingent or not ascertained, then the Court may (if it thinks fit) inquire into and adjudicate upon the validity of such debt or claim and the amount for which the company is liable in respect thereof, in the same manner as if the company were being wound up by the Court; and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated. — E. § 49 (3, 4); N. S. W. a. (No. 40 of 1899) 44; V. f. (No. 1482) 91; T. d. (60 Vic. No. 3) 8; S. A. a. (No. 557) 70 (7); Q. f. (53 Vic. No. 18) 10; W. A. a. (56 Vic. No. 8) 72 (7).

Order confirming reduction and minute to be registered. Minute to form part of memorandum of association. 47. 1. The Registrar, upon the production to him of an order of the Court confirming the reduction of the capital of the company, and the delivery to him of a copy of the order and of a minute (approved by the Court) showing the amount of the capital of the company as altered by the order, the number of shares into which it is to be divided, and the amount of each share, shall register the order and minute; and, on registration, the special resolution confirmed by the order so registered shall take effect. 2. Notice of such registration shall be published in such manners as the Court directs. 3. The Registrar shall certify under his hand the registration of the order and minute; and his certificate shall be conclusive evidence that all the requirements of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute. 4. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association. 5. Subject to the provisions of this Act, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid on such share and the amount of the shares as fixed by the minute. — E. §§ 50, 51, 52; N. S. W. a. (No. 40 of 1899) 46, 47; V. f. (No. 1482) 92, 93, 95; T. d. (60 Vic. No. 3) 11, 12, 14; S. A. a. (No. 557) 71, 72 (1) (2); Q. f. (53 Vic. No. 18) 11, 12, 14; W. A. a. (56 Vic. No. 8) 73, 74 (1) (2).

Saving of rights of creditors who are ignorant of the proceedings. Liability of members to contribute for payment of claim of such creditors. 48. 1. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company is in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of section one hundred and seventy-eight hereof, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute, for the payment of such debt or claim, an amount not exceeding the amount he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration. 2. On the company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up. 3. Nothing in this section shall affect the rights of the contributories of the company among themselves. — E. § 53; N. S. W. a. (No. 40 of 1899) 48; V. f. (No. 1482) 94; T. d. (60 Vic. No. 3) 13; S. A. a. (No. 557) 73; Q. f. (53 Vic. No. 18) 13; W. A. a. (56 Vic. No. 8) 75.

Minute to be embodied in memorandum of association. 49. The minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration, and if any company makes default in complying with this section it shall be liable to a fine not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who knowingly and wilfully authorises or permits such default is liable to a like fine. — E. § 52; N. S. W. a. (No. 40 of 1899) 49; V. f. (No. 1482) 95; T. d. (60 Vic. No. 3) 14; S. A. a. (No. 557) 72 (2); Q. f. (53 Vic. No. 18) 14; W. A. a. (56 Vic. No. 8) 74 (2).

Concealing name of creditor. 50. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be liable to three years' imprisonment with hard labour. — E. § 54; N. S. W. a. (No. 40 of 1899) 50; V. f. (No. 1482) 96; T. d. (60 Vic. No. 3) 15; S. A. a. (No. 557) 74; Q. f. (53 Vic. No. 18) 15; W. A. a. (56 Vic. No. 8) 76.

Power to make rules concerning the foregoing matters. 51. 1. The power of making rules concerning the winding-up of companies conferred by this Act upon the Judges of the Court shall extend to making rules concerning matters in which the Court has jurisdiction under sections forty-four to forty-eight hereof; and until such rules are made, and in so far as no provision is made by such rules, the ordinary practice of the Court in matters of the same nature shall, so far as the same is applicable, be followed. 2. In any proceeding under the said sections the Court may make such order as to costs as it deems fit. — E. § 238; T. a. (33 Vic. No. 22) 205; and cp. notes to § 162, *infra*.

Profits may be divided notwithstanding loss of capital. 52. 1. In any case where — a) A company by the working or exhaustion of a mine, quarry, patent, timber right, leasehold, or other wasting asset in the ordinary course of its business has reduced the net value of its capital assets to an amount less than the amount of the company's paid-up capital; or b) The net value of a company's capital assets is, by loss of capital, less than the amount of the company's paid-up capital, whether such loss of capital be a realised and ascertained loss or an estimated loss, — it shall not be obligatory on such company before declaring a dividend from the profits on the company's operations for any period to have the company's capital reduced in accordance with the provisions of this Act, or to reinstate any lost capital out of profits, provided that the auditor or auditors of the company certify on the company's balance-sheet for the period in respect of which it is proposed to declare a dividend that the assets of the company other than the profits proposed to be divided are, upon a valuation thereof made to his or their satisfaction, more than sufficient to pay the debts and liabilities (excluding the paid-up capital) of the company. 2. Nothing herein shall be construed as authorising a return of capital to shareholders excepting such as may be involved in the working of a mine, quarry, patent, timber right, leasehold, or other wasting asset in the ordinary course of a company's business. — N. S. W. a. (No. 40 of 1899) Sched. II. 73; V. a. (No. 1074) 236; T. a. (33 Vic. No. 22) Sched. I. A. 73; S. A. a. (No. 55) Sched. II. A. 76; Q. e. (27 Vic. No. 4) Sched. I. A. 76; W. A. a. (56 Vic. No. 8) Sched. II. A. 76.

Cancellation of capital and shares.

Power to cancel lost capital. 53. The power to reduce capital shall include a power to cancel any lost capital or any capital unrepresented by available assets, or to pay off any capital in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved: Provided that where the reduction of the capital does not involve either the diminution of liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital: a) The creditors of the company shall not, unless the Court directs otherwise, be entitled to object or required to consent to the reduction and b) The words "and reduced" need not be added to the name of the company before the presentation of the petition for confirming the reduction, and the Court may, if it thinks fit, dispense altogether with the addition of those words. — E.

§§ 46, 48; N. S. W. a. (No. 40 of 1899) 40, 41; V. f. (No. 1482) 98, 99; T. d. (60 Vic. No. 3) 9, e. (6 Edw. 7, No. 25) 2; S. A. a. (No. 557) 68 (5), 70 (4); Q. f. (53 Vic. No. 18) 4, 7; W. A. a. (56 Vic. No. 8) 70 (5), 71 (4).

Company to publish reasons for reduction. 54. In any case where the Court thinks fit it may require the company to publish, in such manner as it thinks fit, the reasons for the reduction of its capital, or such other information in regard to the reduction of its capital as the Court thinks expedient, with a view to giving proper information to the public as to the reduction of its capital, and, if the Court thinks fit, the causes that led to such reduction. — E. § 55; N. S. W. a. (No. 40 of 1899) 45; V. f. (No. 1482) 100; T. d. (60 Vic. No. 3) 10; S. A. a. (No. 557) 70 (2); Q. f. (53 Vic. No. 18) 7; W. A. a. (56 Vic. No. 8) 72 (2).

Contents of minute. 55. The minute required to be registered in the case of reduction of capital shall show, in addition to the other particulars required by law, the amount (if any) which it is proposed shall be deemed to have been paid up on each share at the date of the registration of the minute. — See notes to § 54, *supra*.

Power to reduce capital by cancelling unissued shares. 56. Any company limited by shares may, if authorised so to do by its regulations, modify the conditions contained in its memorandum of association so as to reduce its capital by cancelling any shares that at the date of the passing of such resolution were not taken or agreed to be taken by any person; and the provisions of sections forty-four to fifty hereof shall not apply to any reduction of capital made under this section. — N. S. W. a. (No. 40 of 1899) 39; V. f. (No. 1482) 88 (1); T. e. (6 Edw. 7, No. 25) 4, 5; S. A. a. (No. 557) 68 (6); Q. f. (53 Vic. No. 18) 8; W. A. a. (56 Vic. No. 8) 70 (6).

Application of capital in payment of commission.

Commission, discounts, etc. 57. 1. Upon any offer of shares to the public for subscription its shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount or rate per centum thereof are respectively authorised by the articles of association and disclosed in the prospectus, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised. **2.** Save as aforesaid, a company shall not apply any of its shares or capital money, directly or indirectly, in payment of any commission, discount, or allowance to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares of the company, whether the shares or money are so applied by being added to the purchase-money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money is paid out of the nominal purchase-money or contract price, or otherwise. **3.** Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay. — E. § 89; Q. f. (53 Vic. No. 18) 29.

Share warrants to bearer.

Warrants for fully paid-up shares or stock may be issued to bearer. Effect of share warrants. 58. 1. A company limited by shares, if authorised so to do by its regulations, and subject to the provisions of such regulations, may with respect to any share fully paid up, or with respect to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide, by coupons or otherwise, for payment of future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a "share warrant". **2.** A share warrant shall entitle the bearer thereof to the shares or stock specified therein, and such shares or stock may be transferred by the delivery of the share warrant. — E. § 37 (1, 2); N. S. W. a. (No. 40 of 1899) 57, 58.

Registration of bearer of share warrant. 59. The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any

person by reason of the company entering in its register of members the name of any bearer of a share warrant as the holder of the shares or stock specified therein without the share warrant being surrendered and cancelled. — E. § 37 (3); N. S. W. a. (No. 40 of 1899) 59.

Bearer of share warrant deemed to be a member. But not to qualify as a director.

60. The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations: Provided that the bearer of a share warrant shall not be qualified as the holder of the shares or stock specified in such warrant to become a director or manager of the company. — E. § 37 (4); N. S. W. a. (No. 40 of 1899) 60.

Entries in register where share warrant issued. 61. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock, as if he had ceased to be a member, and shall enter in the register the following particulars: a) The fact of the issue of the warrant; b) A statement of the shares or stock included in the warrant, distinguishing each share by its number; c) The date of the issue of the warrant. — E. § 37 (5); N. S. W. a. (No. 40 of 1899) 61 (1).

Particulars to be entered in register. 62. Until the warrant is surrendered the above particulars shall be deemed to be the particulars required by section one hundred hereof to be entered in the register of members of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member. — E. § 37 (6); N. S. W. a. (No. 40 of 1899) 61 (2, 3).

Particulars to be contained in annual summary. 63. After the issue by the company of a share warrant, the annual summary required by section one hundred and one hereof shall contain the following particulars: a) The total amount of shares or stock for which share warrants are outstanding at the date of the summary; b) The total amount of share warrants issued and surrendered respectively since the last summary was made; and c) The number of shares or amount of stock comprised in each warrant. — E. § 26 (1); N. S. W. a. (No. 40 of 1899) 62.

Stamps on share warrants. 64. 1. There shall be charged on every share warrant, upon the first issue thereof, a stamp duty of an amount equal to three times the amount of the *ad valorem stamp* duty that would be chargeable on a deed transferring the share or shares or stock specified in the warrant if the consideration for the transfer were the nominal value of such share or shares or stock. **2.** Such stamp duty shall be collected, recovered, and enforced under the provisions of *The Stamp Duties Act, 1908*, as if such duty was imposed thereby.

Issuing share warrants not duly stamped. 65. If a share warrant is issued without being duly stamped, the company issuing the same, and also any person who at the time when it is issued is the managing director or secretary or other principal officer of the company, shall be liable to a fine not exceeding fifty pounds.

Liability of members on their shares

Liability of present and past members of company. 66. In the event of a company being wound up every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the payment of such sums as are required for the adjustment of the rights of the contributories amongst themselves: Provided that: a) No past member shall be liable to contribute to the assets of the company: (i.) If he has ceased to be a member for one year or upwards prior to the commencement of the winding-up; or (ii.) In respect of any debt or liability of the company contracted after the time when he ceased to be a member; or (iii.) Unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act; b) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount (if any) unpaid on the shares in respect of which he is liable as a present or past member; c) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into by or on his behalf by the memorandum of association, and the amount

(if any) unpaid on the shares (if any) in respect of which he is liable as a present or past member. — E. § 123; N. S. W. a. (No. 40 of 1899) 33; V. a. (No. 1074) 39; T. a. (33 Vic. No. 22) 40; S. A. a. (No. 557) 99; Q. e. (27 Vic. No. 4) 37; W. A. a. (56 Vic. No. 8) 101. — It seems that in view of subsection (c) Baird's Case, (1899), 2 Ch. 593, in which it was decided that a shareholder in a guarantee company is not a contributory in a winding-up, does not apply in New Zealand. — Morison, *Law of Limited Liability Companies in New Zealand*, 288.

Limitation of company's liability under policy or contract. 67. Nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract. — See notes to § 66, *supra*.

Creditors to be preferred to members. 68. No sum due to any member of a company in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories amongst themselves. — See notes to § 66, *supra*.

Part IV. Management and Administration of Companies.

Appointment and duties of directors.

Subscribers to memorandum to be directors. 69. Unless directors are appointed by the articles of association or until directors are appointed in the manner provided by the articles of association, the subscribers to the memorandum of association of any company shall be the directors of the company. — N. S. W. a. (No. 40 of 1899) Sched. II. A. 53; V. a. (No. 1074) Sched. II. A. 53; T. a. (33 Vic. No. 22) Sched. I. A. 53; S. A. a. (No. 557) Sched. II. A. 56; Q. e. (27 Vic. No. 4) Sched. I. A. 53; W. A. a. (56 Vic. No. 8) Sched. II. A. 56. — See second Sched. § 74. The position of a director is a fiduciary one. He may not make a profit out of dealings with the company. An action in respect of such profits may be brought by the company against the director, but not by a shareholder. — Macdougall v. Duthie, L. R. 3 S. C. (N. Z.) 334.

Restrictions on appointment or advertisement of director. 70. 1. In the case of a company having a capital divided into shares a person shall not be appointed director of the company by the articles of association, or named as a director or proposed director of the company in any prospectus issued by or on behalf of the company, unless before the registration of the articles or the publication of the prospectus, as the case may be, he has by himself or by his agent authorised in writing: a) Signed and filed with the Registrar a consent in writing to act as such director; and b) Either signed the memorandum of association for a number of shares, not less than his qualification (if any), or signed and filed with the Registrar a contract in writing with the company to take from the company and pay for his qualification shares (if any). 2. On the application for registration of the memorandum and articles of association of a company the applicant shall deliver to the Registrar a list of the persons who have consented to be directors of the company, and if such list contains the name of any person who has not so consented the applicant shall be liable to a fine not exceeding fifty pounds. 3. This section does not apply to a company registered before the eighth day of November, One thousand nine hundred and one, or to a company for whose shares the public have not been invited to subscribe, or to a prospectus issued by or on behalf of a company after the expiration of three years from the date when the company is entitled to commence business. — E. § 72; V. f. (No. 1482) 108; T. c. (59 Vic. No. 19) 30, 31; S. A. a. (No. 557) 221, 222; Q. g. (55 Vic. No. 10) 6, 7; W. A. a. (56 Vic. No. 8) 222, 223.

Qualification to be retained. 71. 1. Without prejudice to the restrictions imposed by the last preceding section, it shall be the duty of every director who is not already qualified to obtain his qualification within two months after his appointment, or within such shorter time as may be fixed by the regulations of the company. 2. The office of director of a company shall be vacated if the director does not within the time hereinbefore prescribed obtain his qualification (if any), or if after the expiration of such time he ceases at any time to hold such qualification; and a person vacating office under this section shall be incapable of being reappointed director of the company until he has obtained his qualification. 3. If, after the expiration of the time hereinbefore prescribed, any unqualified person acts as director of a company, he shall be liable to a fine not exceeding five pounds for every day

during which he so acts. — E. § 73; V. f. (No. 1482) 109; and cp. notes to § 70, *supra*. — Cp. E. 7 Edw. 7, c. 50, § 34. Where the articles of association provide that no shareholder shall be entitled "to exercise any privileges as a shareholder" while calls on his shares are unpaid, the election of a shareholder whose calls are in arrears as a director is void. In such case the Court will, by *mandamus*, direct that the office of director be filled by the qualified candidate receiving the next number of votes. — Fryer v. Aynsley et al., L. R. 5 S. C. (N. Z.) 380.

Payment of calls by directors.

Directors to pay calls on shares held by them. 72. 1. Whenever a call on any shares is made payable it shall be obligatory on the directors of the company to pay the amount of such call on all shares held by them respectively on or before the day on which such calls are made payable by shareholders. 2. Every director who fails to comply with this section is liable to a fine not exceeding fifty pounds and not less than five pounds, in addition to his liability for payment of the amount of the call. 3. Every director who within two months from the due date thereof fails to pay any call on shares held by him shall, *ipso facto*, cease to be a director. — See Palmer v. Mapourika Gold-Dredging Co., Ltd., 23 L. R. (N. Z.) 585.

Directors' fees.

When directors' fees to be withheld. 73. 1. It shall not be lawful for any director to receive or for any company to pay any fees or other remuneration to any director who is indebted to the company in respect of calls on his shares, or who has been absent from the meetings of the directors for a period of three months or upwards, unless he was so absent with the leave of the directors. 2. Every director who receives any payment contrary to this section, or who is party to any such payment, is liable for each offence to a fine not exceeding fifty pounds, and any money so paid may in the event of the company being wound up within three years after such payment was made be recovered by the liquidator.

Prospectus.

Filing of prospectus. 74. 1. Every prospectus issued by or on behalf of a company or with reference to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of the publication of the prospectus. 2. A copy of every such prospectus shall be signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, and shall be filed with the Registrar on or before the date of its publication. 3. The Registrar shall not register any prospectus unless it is so dated and signed. 4. No prospectus shall be issued until so filed for registration, and every prospectus shall state that it has been so filed. — E. § 80; V. f. (No. 1482) 103; S. A. a. (No. 557) 224; Q. f. (53 Vic. No. 18) 31; W. A. a. (56 Vic. No. 8) 225. — Cp. E. 7 Edw. 7, c. 50, § 1—5, 8, for the present English law relating to prospectuses. For definition of "prospectus" see § 2. It is to be noted that there must be an "offering to the public for subscription". Private companies registered under Part V. are prohibited from issuing any prospectus inviting subscriptions for shares in its capital. — § 168 (5).

Particulars of prospectus. 75. 1. Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state: a) The contents of the memorandum of association, with the names, addresses, and descriptions of the signatories, and the number of shares subscribed for by them respectively; and b) The number of shares (if any) fixed by the articles of association (if any) as the qualification of a director, and any provision in the articles of association as to the remuneration of the directors; and c) The names, addresses, and descriptions of the directors or proposed directors; and d) The minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment and the amount actually allotted, and the amount (if any) paid on such shares; and e) The number and amount of shares and debentures issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and the number and amount of shares issued or agreed to be issued with preferential, deferred, qualified, special, or limited rights, privileges, or conditions attaching thereto, and the nature and extent of the interest of the holders of such shares in the property and profits of the company, and in every case the considera-

tion for which such shares or debentures were issued or are proposed or intended to be issued; and f) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and the amount payable in cash, shares, or debentures to the vendor, and, where there is more than one vendor or the company is a sub-purchaser, the amount so payable to each vendor; and g) The amount (if any) paid or payable as purchase-money in cash, shares, or debentures for any such property as aforesaid, specifying the amount payable for good-will; and h) The amount (if any) paid or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in the company, or the rate of any such commission; and i) The amount or estimated amount of preliminary expenses; and j) The amount paid or intended to be paid to any promoter, and the consideration for any such payment; and k) The dates of and parties to every material contract, and a reasonable time and place at which any such contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than three years before the date of publication of the prospectus; and l) The names and addresses of the auditors (if any) of the company; and m) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of the company or in any property proposed to be acquired by the company, with a statement of all sums paid or agreed to be paid to him in cash or shares by any person, either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company. 2. For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company in any case where, n) The purchase-money is not fully paid at the date of publication of the prospectus; or o) The purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or p) The contract depends for its validity or fulfilment on the result of such issue. 3. Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "the vendor" included the lessor, and "purchase-money" included the consideration for the lease, and "sub-purchaser" included a sub-lessee. 4. This section does not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe for further shares or debentures; but, subject as aforesaid, applies to any prospectus, whether issued on or with reference to the formation of a company or subsequently thereto: Provided that, in the case of a prospectus published more than three years after the date at which the company is entitled to commence business, q) The requirements as to the memorandum of association, and the qualifications, remuneration, and interest of directors, the names, addresses, and descriptions of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply; and r) The obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus. 5. Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void. 6. Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the contents of the memorandum of association or the signatories thereto, or the number of shares subscribed for by them. 7. In the event of non-compliance with any of the requirements of this section a director or other person responsible for the prospectus shall not incur any liability by reason of such non-compliance if he proves that, s) As regards any matter not disclosed, he was not cognisant thereof; or t) The non-compliance arose from an honest mistake of fact on his part: Provided that in the event of non-compliance with the requirements of paragraph (m) of subsection one of this section a director or other person shall not incur any liability in respect of such non-compliance unless it is proved that he had knowledge of the matters not disclosed. 8. This

section shall not limit or diminish any liability incurred by any person under this Act or under the general law apart from this section. — E. § 81; N. S. W. a. (No. 40 of 1899) 66; V. f. (No. 1482) 104, 105; T. a. (33 Vic. No. 22) 21; S. A. a. (No. 557) 221; Q. f. (53 Vic. No. 18) 31; W. A. a. (56 Vic. No. 8) 222. — A representation in a prospectus that a company "has proved a great success both financially and otherwise providing as it does outlets for the beef and mutton of the district, and increasing the trade of the port to the producer", is a representation that the company has been a financial success. But whether the financial success has been "great" or not is a matter of opinion merely. — *Hutchinson v. Western Packing Co.*, 19 L. R. (N. Z.) 236. — Where a prospectus sets forth that a company is formed "to carry on the business of woollen manufacturers, whether the manufactured articles are wholly or in part composed of wool", and the memorandum of association provides that the objects of the company are "the manufacture of woollen and other goods", a subscriber may refuse to take the shares. — *North New Zealand Woollen Mfg. Co., Ltd. v. Cairus*, 6 L. R. (N. Z.) 12. A misrepresentation as to the number of shares subscribed for is a material one. — *Colonial Land Settlement Co. v. Bohan*, L. R. 3 S. C. (N. Z.) 98. A statement in a prospectus that a company is incorporated when in reality it is only about to be incorporated is not such a misrepresentation as will entitle the applicant to rescind the contract. — *In re Waipori River Dredging Co., Ltd., Shaw's Case*, 10 L. R. (N. Z.) 24. Where the prospectus states that the memorandum of association and articles of association are open to inspection at a specified place, and that shares are to be deemed as taken subject thereto, it becomes the duty of the intending purchaser of shares to acquaint himself therewith. — *In re Waipori River Dredging Co., Ltd., Shaw's Case*, 10 L. R. (N. Z.) 24. See also *In re Auckland Cooperative Drapery & Clothing Co., Ltd., Fraser's Case*, L. R. 5 S. C. (N. Z.) 59. The right to rescind on the ground of misrepresentation may be forfeited by acquiescence. — *Palmerston Brewery Co., Ltd. v. Wollerman*, L. R. 2 S. C. (N. Z.) 223. See *Lyell Hydraulic Sluicing Co., Ltd. v. Harcourt*, 23 L. R. (N. Z.) 168. See also § 106, *infra*, and notes thereto.

Liability for statements in prospectus. 76. 1. Every person who is a director of a company at the time of the issue of a prospectus by or in relation to such company, and every person who, having authorised such naming of him, is named in the prospectus as a director of the company, or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, is liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of such prospectus for any loss or damage they may sustain by reason of any untrue statement in the prospectus, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved: a) With respect to every such untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that the had reasonable ground to believe, and up to the time of the allotment of the shares or debentures, as the case may be, did in fact believe, that the statement was true; and b) With respect to every such untrue statement purporting to be a statement by an expert, or contained in what purports to be a copy of or extract from any report or valuation by an expert, or a copy of or extract from any assay certificate or other document setting forth the capacity, productiveness, or other quality of anything material to the objects or purposes for which the company is formed or intended to be formed, or any of them, that it fairly represented such statement, or was a correct copy of or extract from such report or valuation or such assay certificate or other document, and that such director, person named, promoter, or other person authorising the issue of the prospectus as aforesaid had reasonable ground to believe that the person making the statement, report, valuation, assay certificate, or other document was competent to make it; and c) With respect to every such untrue statement purporting to be a statement made by an official person, or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement, or copy of or extract from such document; or unless it is proved; d) That, having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that the prospectus, was issued without his authority or consent; or e) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent; or f) That after the issue of such prospectus, and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given. 2. Every action or other legal proceeding under this section

shall be commenced within three years after the cause of action arose. 3. In this section, — “Expert” includes any person whose profession or occupation, or assumed profession or occupation, gives authority to a statement made by him. “Promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing such untrue statement, but does not include any person by reason only of his acting in a professional capacity for persons engaged in procuring the formation of the company. — E. § 84 (1, 5); N. S. W. a. (No. 40 of 1899) 66; V. f. (No. 1482) 106—110; T. a. (33 Vic. No. 22) 21; S. A. a. (No. 557) 221 Q. f. (53 Vic. No. 18) 31; W. A. a. (56 Vic. No. 8) 222.

Indemnity where name of person improperly inserted as director. 77. Where any such prospectus as aforesaid contains the name of any person as a promoter or director of the company, or as having agreed to become a promoter or director thereof, and such person has not consented to become a promoter or director, or has withdrawn his consent before the issue of such prospectus, and has not authorised or consented to the issue thereof, the promoters or directors of the company (except any without whose knowledge or consent the prospectus was issued), and any other person who authorised the issue of such prospectus, shall be liable to indemnify the person named as a promoter or director of the company, or as having agreed to become a promoter or director thereof as aforesaid, against all damages, costs, charges, and expenses to which he becomes liable by reason of his name being inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof. — E. § 84 (3); V. f. (No. 1482) 111, 118 (2); S. A. a. (No. 557) 222; Q. g. (55 Vic. No. 10) 7; W. A. a. (56 Vic. No. 8) 223.

Contribution from co-directors, etc. 78. 1. Every person who by reason of his being a promoter or director, or of his being named as a promoter or director, or as having agreed to become a promoter a director, or of his having authorised the issue of the prospectus, becomes liable to make any payment under the provisions of this Act shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment. 2. Every action or other legal proceeding under this section shall be commenced within three years after the liability to contribute arose. — E. § 84 (4); V. f. (No. 1482) 120; S. A. a. (No. 557) 223; Q. g. (55 Vic. No. 10) 8; W. A. a. (56 Vic. No. 8) 224. — Cp. E. 7 Edw. 7, c. 50, § 33.

Person inserting name of another in prospectus as director, etc., without authority. 79. 1. Every person who knowingly and wilfully inserts or causes to be inserted in any prospectus or notice inviting the public to subscribe for shares or debentures of a company the name of any other person, whether as director, broker, or solicitor, without the express authority in writing of the person whose name is so inserted is liable to a fine not exceeding one hundred pounds, or to three years’ imprisonment with hard labour. 2. This section shall not prejudice or affect any other liability imposed by or under this Act.

Making or issuing false certificate, report, etc. 80. Every person is liable to three years’ imprisonment with hard labour who, being an “expert” within the meaning of section seventy-six hereof, knowingly and wilfully makes, signs, or gives, or causes to be made, signed, or given, any false assay certificate, report, valuation, or other document relating to or setting forth the capacity, productiveness, or other quality of anything material to the objects or purposes for which any company is formed or is intended to be formed, or who, knowing the same to be false, issues, utters, offers, or disposes of any such document as aforesaid. — E. § 281; V. f. (No. 1482) 118.

Limitation of section. 81. Every prosecution or other criminal proceeding for any offence under the two last preceding sections shall be commenced or taken within three years after the alleged offence was committed.

Unlimited liability of directors.

Limited company may have directors with unlimited liability. 82. Where a company is formed as a limited company, the liability of the directors or managers of such company, or of the managing director, may, if so provided by the memorandum of association, be unlimited. — E. § 60; N. S. W. a. (No. 40 of 1899) 34; S. A. a. (No. 557) 13; W. A. a. (56 Vic. No. 8) 14.

Notice to be given to director on his election that his liability will be unlimited. Neglect to give notice. 83. 1. In any such company the directors of the company

(if any), and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited, and the promoters, directors, and manager (if any) of such company, or one of them, shall, before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited. 2. Every director, manager, or proposer who makes default in adding such statement, and every promoter, director, or manager who makes default in giving such notice, is liable to a fine not exceeding one hundred pounds, and is also liable for any damage which the person so elected or appointed sustains from such default; but the liability of the person elected or appointed shall not be affected by such default. — E. § 60; N. S. W. a. (No. 40 of 1899) 37; S. A. a. (No. 557) 230; W. A. a. (56 Vic. No. 8) 230.

Existing limited companies may, by special resolution, make liability of directors unlimited. 84. A limited company may, by a special resolution, if authorised so to do by its regulations as originally framed, or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or of the managing director. — E. § 61; N. S. W. a. (No. 40 of 1899) 38; S. A. a. (No. 557) 68 (7); W. A. a. (56 Vic. No. 8) 70 (7).

Copy of resolution to be embodied in memorandum. 85. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association issued after the passing of the resolution; and any default in this respect shall be deemed to be a default in complying with the provisions of section ninety-four hereof, and shall be punishable accordingly. — E. 30 & 31 Vic. c. 131, § 8; N. S. W. a. (No. 40 of 1899) 38 (2).

Liability of director, past and present, to contribute in winding-up where liability is unlimited. Director with unlimited liability may have set-off as under section 199. 86. 1. On the winding-up of a limited company any director or manager, whether past or present, whose liability is in pursuance of this Act unlimited shall, subject to the provisions hereinafter contained, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company. 2. No contribution required from any such past director or manager who has ceased to hold office for one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) he is liable to contribute as an ordinary member of the company. 3. No contribution required from any such past director or manager in respect of any debt or liability of the company contracted after the time when he ceased to hold such office shall exceed the amount (if any) he is liable to contribute as an ordinary member of the company. 4. Subject to the regulations of the company, no contribution required from any such director or manager shall exceed the amount (if any) he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up. 5. The Court may, if it thinks fit, make to any such director or manager the same allowance by way of set-off as under section one hundred and ninety-nine hereof it may make to a contributory where the company is not limited. — E. §§ 123 (2), 165; N. S. W. a. (No. 40 of 1899) 35, 36; S. A. a. (No. 557) 100, 122 (2); W. A. a. (56 Vic. No. 8) 102, 125 (2).

Meetings of shareholders.

Statutory meeting of company. 87. 1. Every company limited by shares shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business, hold a general meeting of the members of the company, which shall be called "the statutory meeting". 2. The directors shall, at least seven days before the day on which the meeting is held, forward to every member of the company a report certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, stating: a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and, in the case of shares partly paid up, the extent to which they are so paid up, and in either case the consideration for which they have been allotted; b) The

total amount of cash received by the company in respect of such shares, distinguished as aforesaid; c) An abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company; d) The names, addresses, and occupations of the directors, auditors (if any), manager (if any), and secretary of the company; and e) The particulars of any contract to be submitted to the meeting for modification, together with particulars of the modification proposed. 3. The report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company. 4. The directors shall cause a copy of the report, certified as aforesaid, to be filed with the Registrar forthwith after the sending thereof to the members of the company. 5. The directors shall cause a list showing the names, addresses, and occupations of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting. 6. The members of a company present at the meeting may, if the articles or regulations so provide, elect or confirm the election or appointment of directors. 7. The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company or arising out of the report, whether previous notice thereof has been given or not; but no resolution may be passed of which notice has not been given in accordance with the articles of association. 8. The meeting may adjourn from time to time, and at any such adjournment any resolution may be passed of which notice has been given in accordance with the articles of association, either before or after the former meeting, and the adjourned meeting shall have the same powers as an original meeting. 9. If default is made in filing such report as aforesaid, or in holding the statutory meeting, then, at the expiration of fourteen days after the last day on which the meeting ought to have been held, any member may petition the Court for the winding-up of the company; and upon the hearing of the petition the Court may either direct that the company be wound up, or give directions for the report to be filed or for a meeting to be held, or make such other order as is just, and may order that the costs of the petition be paid by any persons who, in the opinion of the Court, are responsible for the default. — E. § 65; N. S. W. a. (No. 40 of 1899) 242; V. f. (No. 1482) 55; T. a. (33 Vic. No. 22) 53; S. A. a. (No. 557) 47 (1); Q. f. (53 Vic. No. 18) 34; W. A. a. (56 Vic. No. 8), 49 (1). — Cp. E. 63 & 64 Vic. c. 48, § 12; 7 Edw. 7, c. 50, § 22. For notes on subsection 9 see note to § 177, *infra*.

General meeting of company. 88. A general meeting of every company shall be held once at least in every year. — E. § 64; N. S. W. a. (No. 40 of 1899) 246; V. a. (No. 1074) 50; T. a. (33 Vic. No. 22) 54; S. A. a. (No. 557) 47 (2); Q. e. (27 Vic. No. 4) 48; W. A. a. (56 Vic. No. 8) 49 (2). — Cp. E. 7 Edw. 7, c. 50, § 24.

Extraordinary general meeting. 89. 1. Notwithstanding anything in the regulations of a company, the directors shall, on the requisition of the holders of shares representing not less than one-tenth of the issued capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company. 2. The requisition shall state the objects of the meeting, and be signed by the requisitionists and deposited at the office of the company, and may consist of several documents in like form, each signed by one or more requisitionists. 3. If the directors of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority in value of them, may themselves convene the meeting, provided that the meeting so convened shall be held within three months from the date of such deposit. 4. If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution, and, if thought fit, of confirming it as a special resolution; and if the directors do not convene such further meeting within seven days from the date of the passing of the first resolution the requisitionists, or a majority in value of them, may themselves convene the meeting. 5. Any meeting convened under this section by requisitionists shall be convened in the same manner as nearly as possible as meetings convened by directors according to the regulations of the company. — E. § 66; V. f. (No. 1482) 56; and cp. notes to § 90, *infra*.

Provision where no regulations as to meetings. 90. Unless the regulations or a company otherwise provide: a) Every member shall have one vote; b) A general meeting shall be held to be duly summoned if seven days' notice in writing has been served on every member in the manner in which notices are required to be served by Table A in the second Schedule hereto; c) Five members shall be competent to summon the meeting; d) The members present may elect any person to be chairman of such meeting. — E. § 67; N. S. W. a. (No. 40 of 1899) 248; V. a. (No. 1074) 53; T. a. (33 Vic. No. 22) 57; S. A. a. (No. 557) 49; Q. e. (27 Vic. No. 4) 52; W. A. a. (56 Vic. No. 8) 51.

Special and extraordinary resolutions.

Special resolution defined. 91. 1. A resolution passed by a company shall be deemed to be a "special resolution" if: a) Passed by a majority of not less than three-fourths of such members of the company entitled under the regulations of the company to vote as are present in person or by proxy (in cases where by the regulations of the company proxies are allowed) at any general meeting of which notice stating the intention to propose such resolution has been duly given; and b) Confirmed by a majority of such members for the time being entitled according to the regulations of the company to vote as are present in person or by proxy at a subsequent general meeting of which notice has been duly given, held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which such resolution was first passed. 2. At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that any resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same. 3. In computing the majority under this section when a poll is demanded reference shall be had to the number of votes to which a member is entitled by the regulations of the company. 4. Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the company. — E. § 69; N. S. W. a. (No. 40 of 1899) 247; V. a. (No. 1074) 52; T. a. (33 Vic. No. 22) 56; S. A. a. (No. 557) 3; Q. e. (27 Vic. No. 4) 50; W. A. a. (56 Vic. No. 8) 3. — Cp. E. 7 Edw. 7, c. 50, § 25. A notice calling a meeting of shareholders "to consider the financial position of the company" is not a notice specifying an intention to propose a resolution that the company be wound up voluntarily within subsection (1) (a). — *Liquidators of South Canterbury Building Society v. Stumbles*, 12 L. R. (N. Z.) 58.

Extraordinary resolution defined. 92. A resolution shall be deemed to be "an extraordinary resolution" if passed by a majority of not less than three-fourths of such members of the company entitled under the regulations to vote as are present in person or by proxy (in cases where by the regulations proxies are allowed) at any general meeting of which notice stating the intention to propose such resolution has been duly given. — E. § 69; and see notes to § 93, *infra*. — Cp. E. 7 Edw. 7, c. 50, § 45.

Registration of special resolutions. 93. 1. A copy of every special resolution shall be forwarded to the Registrar and recorded by him. 2. If default is made in forwarding such copy for fifteen days from the date of the confirmation of the resolution, the company shall be liable to a fine not exceeding two pounds for every day after the expiration of such fifteen days during which such default continues; and every director and manager of the company who knowingly and wilfully authorises or permits such default is liable to a like fine. — E. § 70; N. S. W. a. (No. 40 of 1899) 249; V. a. (No. 1074) 54, f. (No. 1482) 57; T. a. (33 Vic. No. 22) 58; S. A. a. (No. 557) 51; Q. e. (27 Vic. No. 4) 53; W. A. a. (56 Vic. No. 8) 53.

Copies of special resolutions. 94. 1. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association issued after the passing of such resolution. 2. Where no articles of association have been registered, a copy of any special resolution shall be forwarded to any member requesting the same on payment of one shilling, or such less sum as the company directs. 3. If any company makes default in complying with this section it shall be liable to a fine not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who knowingly and wilfully authorises or permits such default is liable to a like fine. — E. § 70; N. S. W. a. (No. 40 of 1899) 250; V. a. (No. 1074) 55; T. a. (33 Vic. No. 22) 59; S. A. a. (No. 557) 52; Q. e. (27 Vic. No. 4) 54; W. A. a. (56 Vic. No. 8) 54.

Allotment of shares.

Restrictions as to allotment. 95. 1. No allotment shall be made of any share capital of a company offered to the public for subscription unless: a) The amount (if any) fixed by the memorandum or articles of association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or b) If no amount is so fixed and named, then the whole amount of the share capital so offered for subscription has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company. 2. The amount so fixed and named, and the whole amount aforesaid, shall be reckoned exclusive of any amount payable otherwise than in cash, and is in this Act referred to as "the minimum subscription". 3. The amount payable on application on each share shall not be less than ten per centum of the nominal amount of the share. 4. If the foregoing conditions are not complied within ninety days after the first issue of the prospectus all money received from applicants for shares shall be forthwith repaid to the applicants without interest; and if any such money is not so repaid within ninety-eight days after the issue of the prospectus the directors of the company shall be jointly and severally liable to repay that money, with interest at the rate of five per centum per annum from the expiration of the ninety-eight days: Provided that a director shall not be liable if he proves that the failure to pay such money was not due to any misconduct or negligence on his part. 5. Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void. 6. This section, except subsection three, does not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription. — E. § 85; V. f. (No. 1482) 58; S. A. a. (No. 557) 226; W. A. a. (56 Vic. No. 8) 226. — **Application for shares.** An application for shares addressed to the provisional directors of a company not yet registered (which circumstance is known to the applicant) constitutes such provisional directors the agents of the applicant to apply for shares, and authorises the company when formed to accept such application and to place him on the register of such company. — *In re Nenthorn Public Battery Co., Ltd., Strong's Case*, 9 L. R. (N. Z.) 197; *In re Westport Cardiff Coal Co., Ltd.*, 12 L. R. (N. Z.) 410, overruling, *In re Kaiapoi Glass Co., Hollier's Case* L. R. 5 S. C. (N. Z.) 297. A call notice may under certain circumstances be a sufficient notice of allotment of shares to the applicant. — *New Zealand Farmers' Dairy Union v. Birch*, 15 L. R. (N. Z.) 315, distinguishing *In re Roseville Dairy Factory Co., Ltd., Goodlet's Case*, 9 L. R. (N. Z.) 169. Shares must be allotted within a reasonable time after application. Otherwise the applicant by giving notice of his refusal to accept allotment, within a reasonable time after receipt of notice of allotment, is not bound. — *In re Seed & Agricultural Co. of New Zealand, Ltd., Trulove's Case*, 12 L. R. 255. An application for shares made on behalf of a person who has not authorized the same may become binding upon him where he receives notice of allotment, and pays calls on the shares. — *Southland Frozen Meat & Produce Export Co., Ltd. v. Potter*, L. R. 3 S. C. (N. Z.) 308.

Effect of irregular allotment. 96. 1. An allotment made by a company to an applicant in breach of the foregoing provisions shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company, and not later, and shall be so voidable notwithstanding that the company is in course of being wound up. 2. If any director of a company knowingly commits or permits or authorises a breach of any of the foregoing provisions relating to allotment he shall be liable to compensate the company and the allottee respectively for any damage, loss, or costs the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover the same shall not be commenced after the expiration of two years from the date of the allotment. — E. § 86. — Cp. notes to § 97, 106, *infra*.

Return of allotments. 97. 1. Whenever a limited company makes any allotment of its shares the company shall within one month thereafter file with the Registrar; a) A return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and b) In the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of

shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they were allotted. 2. Every director, manager, secretary, or other officer of the company who is knowingly a party to any breach of this section is liable to a fine not exceeding fifty pounds for every day during which such breach continues. — E. § 88; N. S. W. a. (No. 40 of 1899) 55; V. f. (No. 1482) 59; S. A. a. (No. 557) 25; Q. f. (53 V. No. 18) 28; W. A. a. (56 Vic. No. 8) 26. — Cp. 7 Edw. 7, c. 50, § 6. Where shareholders entitled to fully paid-up shares know that the provisions of subsection (1) (b) have not been complied with, and allow their names to remain on the share register, they may become liable to pay cash for the same. — *Lodge v. Roxburgh Amalgamated Mining & Sluicing Co., Ltd.*, 11 L. R. (N. Z.) 467. The burden of proof that the contract was registered is not on the liquidators. — *In re Bruce's Patent Oatmeal & Milling Co., Ltd.*, *Brayshaw's Case*, 8 L. R. (N. Z.) 483. If in consequence of the agreement to allot paid-up shares not having been registered the shareholder is made a contributory, *semble*, he may prove in the liquidation for the amount of calls paid as for damages. — *In re Waitohi Coal Mining Co., Ltd.*, L. R. 4 S. C. (N. Z.) 250. See also *In re Bruce's Patent Oatmeal & Milling Co., Ltd.*, *Drysdale's Case*, 8 L. R. (N. Z.) 598; *Drysdale v. Liquidators of the Bruce Patent Oatmeal & Milling Co., Ltd.*, 10 L. R. (N. Z.) 116; *In re Waimea Creek Gold-Dredging Co., Ltd.*, 13 L. R. (N. Z.) 303; *In re New Zealand Pine Co., Ltd.*, 17 L. R. (N. Z.) 257. Cp. cases in note to § 106, *infra*.

Provision where no contract registered. 98. In any case where shares in any company were issued prior to the coming into operation of *The Companies Act, 1901*, as fully or partly paid up for a consideration other than cash, but no contract was filed as required by section thirty-four of *The Companies Act, 1882*, then if such shares a) Were issued *bonâ fide* for a substantial consideration, or b) Were subsequently acquired by any person *bonâ fide* without notice of the omission as aforesaid, the allottee or holder of such shares shall not be liable to pay to the company in respect of such shares any sum other than the amount of the nominal liability (if any) subject to which the shares were issued. — Cp. note to § 97, *supra*.

Commencement of business.

Restriction on commencement of business. 99. 1. A company shall not commence any business or exercise any borrowing-powers unless: a) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription hereinbefore mentioned; and b) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and c) There has been filed with the Registrar a statutory declaration by the manager or one of the directors that the aforesaid conditions have been complied with. 2. The Registrar, on the filing of such statutory declaration, shall certify that the company is entitled to commence business, and such certificate shall be conclusive evidence that the company is so entitled. 3. Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding. 4. Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures, or the receipt of any application. 5. If a company commences business or exercises borrowing-powers in breach of this section, every person who is responsible for the breach shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the breach continues. 6. Subsections one to five of this section do not apply to a company registered before the eighth day of November, One thousand nine hundred and one, nor to any company for whose shares the public have not been invited to subscribe. 7. Where a company does not before it commences business issue a prospectus offering shares to the public, it shall be the duty of the directors before commencing business or undertaking any obligation in furtherance of any of the objects contained in its memorandum of association (other than the exercise of borrowing-powers) to file with the Registrar a statutory declaration, signed by all the directors, stating the amount of capital for which shares have been subscribed and allotted with a liability to pay for the same wholly or partly in cash, and stating that, in their opinion, the capital subscribed for and shares allotted as aforesaid, together with the money (if any) raised under the company's borrowing-powers, are sufficient to justify the company in commencing business. 8. Every director who commits a breach of the last preceding subsection, or who negligently, and without having made a

reasonable investigation or inquiry as to the requirements of the company, makes such declaration as aforesaid is liable to a fine not exceeding one hundred pounds. 9. Nothing in subsection seven hereof shall apply to any liability incidental to the engagement of officers of the company, or to the expenses preliminary or incidental to the establishment of the company. — E. § 87; V. f. (No. 1482) 21. — Under subsection (2), *quaere* whether the want of proof of the incorporation of a plaintiff company is a nonsuit point, and whether the proper course is not to ask leave to have the action struck out on the ground that there is no plaintiff. — *Lyell Hydraulic Sluicing Co., Ltd., v. Harcourt*, 23 L. R. (N. Z.) 168.

Register of members.

Register of members. 100. 1. Every company shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars: a) The names and addresses and the occupations (if any) of the members of the company, with the addition, in the case of a company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member; b) The date at which the name of any person was entered in the register as a member; and c) The date at which any person ceased to be a member. 2. Any company committing a breach of this section shall be liable to a fine not exceeding five pounds for every day during which such breach continues, and every director or manager of the company who knowingly and wilfully authorises or permits such breach is liable to a like fine. — E. § 25; N. S. W. a. (No. 40 of 1899) 19 (1); V. a. (No. 1074) 26; T. a. (33 Vic. No. 22) 25; S. A. a. (No. 557) 28; Q. e. (27 Vic. No. 4) 24; W. A. a. (56 Vic. No. 8) 29.

Annual summary. Failing to forward list of members. 101. 1. Every company having a capital divided into shares shall once at least in every year make a list of all persons who are members of the company on the fourteenth day succeeding the day on which the ordinary general meeting is held, or, if there are more ordinary general meetings than one in each year, then on the fourteenth day succeeding the day on which the first of such ordinary general meetings is held; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars: a) The amount of the capital of the company, and the number of shares into which it is divided; b) The number of shares taken, from the commencement of the company up to the date of the summary, distinguishing between the shares issued for cash and those issued otherwise than for cash or only partly for cash; c) The amount of calls made on each share; d) The total amount of calls received; e) The total amount of calls unpaid; f) The total amount of shares forfeited; g) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them; h) The total amount of debt due from the company in respect of all mortgages required to be registered under this Act; and i) The names and addresses and occupations of every person who is a director or manager of the company at the date of the summary. 2. The above list and summary shall be contained in a separate part of the register, and shall be completed and signed by the manager or by the secretary of the company within seven days after the fourteenth day above mentioned, and a copy shall forthwith be forwarded to the Registrar. 3. Any company making default in forwarding such list of members or summary to the Registrar is liable to a fine not exceeding five pounds for every day during which such default continues, and every director and manager of the company who knowingly and wilfully authorises or permits such default is liable to a like fine. — E. § 26; N. S. W. a. (No. 40 of 1899) 20, 21; V. a. (No. 1074) 27, 28; T. a. (33 Vic. No. 22) 26, 27; S. A. a. (No. 557) 29, 30; Q. e. (27 Vic. No. 4) 25, 26; W. A. (56 Vic. No. 8) 30, 31. — Cp. E. 7 Edw. 7, c. 50, § 21.

List of directors to be kept and sent to Registrar. Fine on company not keeping or sending list of directors. 102. 1. Every company not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors and manager, and shall send to the Registrar a copy of such register, and shall from time to time notify to the Registrar the appointment of any new director and manager. 2. If default is made in compliance with this section the company shall be liable to a fine not exceeding five pounds for every day during which such default continues, and every director

and manager of the company who knowingly and wilfully authorises or permits such default is liable to a like fine. — E. § 75; N. S. W. a. (No. 40 of 1899) 70, 71; V. a. (No. 1074) 45, 46, f. (No. 1482) 166; T. a. (33 Vic. No. 22) 49, 50; S. A. a. (No. 557) 43; Q. e. (27 Vic. No. 4) 44, 45; W. A. a. (56 Vic. No. 8) 45.

No entry of trusts on register. 103. No notice of any trust, expressed, implied, or constructive, shall be entered on the register or be receivable by the Registrar. — E. § 27; N. S. W. a. (No. 40 of 1899) 237; V. a. (No. 1074) 31; T. a. (33 Vic. No. 22) 32; S. A. a. (No. 557) 31; Q. e. (27 Vic. No. 4) 29; W. A. a. (56 Vic. No. 8) 32.

Inspection of register. 104. 1. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned. 2. Such register, except when closed as hereinafter mentioned, shall during business hours (or during such time, not being less than two hours in each day, as the company in general meeting may appoint) be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company prescribes for each inspection. 3. Every such member or other person shall be entitled to a copy of such register or any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied. 4. If such inspection or copy is refused the company shall be liable for each refusal to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which such refusal continues; and every director and manager of the company who knowingly authorises or permits such refusal is liable to a like fine, and, in addition to the above fine, the Court may order the register to be forthwith produced for inspection. — E. § 30; N. S. W. a. (No. 40 of 1899) 239; V. a. (No. 1074) 33; T. a. (33 Vic. No. 22) 34; S. A. a. (No. 557) 33; Q. e. (27 Vic. No. 4) 31; W. A. a. (56 Vic. No. 8) 34.

Power to close register. 105. Any company may, upon giving notice by an advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year. — E. § 31; N. S. W. a. (No. 40 of 1899) 240; V. a. (No. 1074) 34; T. a. (33 Vic. No. 22) 35; S. A. a. (No. 557) 34; Q. e. (27 Vic. No. 4) 32; W. A. a. (56 Vic. No. 8) 35.

Remedy for error in register. 106. 1. If the name of any person is without sufficient cause entered in or omitted from the register of members of any company, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may apply to the Court for an order that the register be rectified. 2. The Court may either refuse such application, with or without costs, or, if satisfied of the justice of the case, make an order for the rectification of the register, and direct the company to pay all the costs of such application, and any damages the party aggrieved has sustained. — E. § 32; N. S. W. a. (No. 40 of 1899) 232 (1); V. a. (No. 1074) 36; T. a. (33 Vic. No. 22) 37; S. A. a. (No. 557) 35 (1); Q. e. (27 Vic. No. 4) 34; W. A. a. (56 Vic. No. 8) 36 (1). — A person who has the right to have his name removed from the register of shareholders on the ground of misrepresentation may lose the right by delay. What constitutes an unreasonable delay depends on the circumstances of the particular case. — *In re Nenthorn Consolidated G. M. Co., Ltd., Clements' Case*, 9 L. R. (N. Z.) 233; *Hutchison v. Western Packing Co.*, 19 L. R. (N. Z.) 236. The right to have the name removed from the register is not kept alive by threats of legal proceedings or by strenuous efforts to induce the company to remove the name. — *In re Nenthorn Consolidated G. M. Co., Ltd., Clements' Case*, 9 L. R. (N. Z.) 233. It may be lost by acquiescence. — *In re Bell Hill G. M., etc., Co., Ltd.*, 19 L. R. (N. Z.) 164; *Gray v. Equitable Insurance Association* 6 L. R. (N. Z.) 450. The book purporting to be a share register may be so defective that an entry therein may not make the persons whose names are entered liable as shareholders. — *Cp. Lodge v. Roxburgh Amalgamated Mining & Sluicing Co., Ltd.*, 11 L. R. (N. Z.) 467. See also *In re Rangiora Linseed Oil Cake & Fibre Mfg. Co., Ltd., Stalker's Case*, L. R. 3 S. C. (N. Z.) 215; *In re New Zealand Dairy Farmers' Cooperative Co. Ltd., Taiaroa's Case*, 16 L. R. (N. Z.) 78; *Re Bruce's Patent Oatmeal & Milling Co., Ltd., Reid & Gray's Case*, 11 L. R. (N. Z.) 152.

Court may rectify register. 107. In any proceeding under the last preceding section the Court may decide any question relating to the title of any party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company, and generally the Court may in any such proceeding decide any question relating to the rectification of the register:

Provided that the Court may direct an issue to be tried in which any question of law may be raised, and in such case any decision of the Court shall be subject to appeal in the manner authorised by any law or practice for the time being in force. — E. § 32; N. S. W. a. (No. 40 of 1899) 232 (2, 3); V. a. (No. 1074) 36; T. a. (33 Vic. No. 22) 37; S. A. a. (No. 557) 35 (2); Q. e. (27 Vic. No. 4) 34; W. A. a. (56 Vic. No. 8) 36 (2).

Notice of rectification to be given to Registrar. 108. Where an order is made rectifying the register of members of a company required to send a list of its members to the Registrar, the Court shall by its order direct that due notice of such rectification be given to the Registrar. — E. § 32; N. S. W. a. (No. 40 of 1899) 232 (4); V. a. (No. 1074) 37; T. a. (33 Vic. No. 22) 38; S. A. a. (No. 557) 36; Q. e. (27 Vic. No. 4) 35; W. A. a. (56 Vic. No. 8) 37.

Register to be evidence. 109. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein. — E. § 33; N. S. W. a. (No. 40 of 1899) 226; V. a. (No. 1074) 38; T. a. (33 Vic. No. 22) 39; S. A. a. (No. 557) 37; Q. e. (27 Vic. No. 4) 36; W. A. a. (56 Vic. No. 8) 38. — See Southland Frozen Meat & Produce Export Co., Ltd. v. Potter, L. R. 3 S. C. 308.

Insurance and other companies to publish statements as in Table B. 110. 1. Every insurance company and every company that carries on the business of insurance in common with any other business shall, before it commences business, and once in every year during which it carries on business, make a statement in the form in Table B in the second Schedule hereto, or as near thereto as circumstances admit; and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on. 2. If default is made in compliance with this section the company shall be liable to a fine not exceeding five pounds for every day during which such default continues, and every director and manager of the company who knowingly and wilfully authorises or permits such default is liable to a like fine. 3. Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence. — E. § 108; N. S. W. a. (No. 40 of 1899) 69; V. a. (No. 1074) 44; T. a. (33 Vic. No. 22) 48; S. A. a. (No. 557) 42; Q. e. (27 Vic. No. 4) 43; W. A. a. (56 Vic. No. 8) 43.

Branch registers.

Companies may keep branch registers. Particulars to be entered thereon. 111. 1. Any company incorporated in New Zealand may, if authorised so to do by any special Act of the General Assembly, or by its regulations, cause to be kept in any place within His Majesty's dominions beyond New Zealand a branch register of any of its members who desire to have their names entered thereon. 2. The same particulars shall be entered on a branch register as are entered on the principal register kept at the principal office of the company in New Zealand. — E. § 34; N. S. W. a. (No. 40 of 1899) 25, 27 (1); V. f. (No. 1482) 61, 63; Q. f. (53 Vic. No. 18) 32 (1, 3).

Copies of entries in branch register to be entered on duplicates. 112. A copy of every entry in a branch register shall be forthwith transmitted to the company's principal office as aforesaid, and, on receipt thereof, shall be entered in a duplicate of the branch register, to be there kept for the purpose by the company. — E. § 35; N. S. W. a. (No. 40 of 1899) 29; V. f. (No. 1482) 56; Q. f. (53 Vic. No. 18) 32 (5).

Entries to be evidence. 113. A branch register and the duplicate thereof shall for all purposes be deemed to be a part of the principal register, and shall be *prima facie* evidence of the particulars entered therein respectively. — E. § 35; N. S. W. a. (No. 40 of 1899) 27 (1); V. f. (No. 1482) 63; Q. f. (53 Vic. No. 18) 32 (3).

Transactions to be registered in branch register only. 114. No transaction with respect to any shares registered in a branch register shall during the continuance of such registration be entered in any other register of the company. — E. § 35; N. S. W. a. (No. 40 of 1899) 30; V. f. (No. 1482) 66; Q. f. (53 Vic. No. 18) 32 (6).

On discontinuance of branch register entries to be transferred. 115. A company may, if duly authorised so to do, cease to keep any branch register, and thereupon all entries on that register shall be transferred to the principal register, or to some other branch register, at the option of the company. — E. § 35; N. S. W. a. (No. 40 of 1899) 31; V. f. (No. 1482) 67; Q. f. (53 Vic. No. 18) 32 (7).

Stamp duty. 116. Any instrument of transfer of a share registered in a branch register shall be deemed to be a transfer of property situated out of New Zealand, and shall be exempt from New Zealand stamp duty.

Regulations for keeping branch registers. 117. Subject to this Act, any company may by its regulations make such provision as it thinks fit respecting the keeping of branch registers. — E. § 35; N. S. W. a. (No. 40 of 1899) 32; V. f. (No. 1482) 68; Q. f. (53 Vic. No. 18) 32 (9).

As to existing branch registers. 118. Where a company has heretofore kept a branch register at any place containing the same particulars as are contained in the principal register, such branch register shall be deemed to have been lawfully established and kept, and the transfers recorded therein to have been legally made; and the provisions of this Act shall hereafter apply and be complied with accordingly.

As to estate duty payable in New Zealand. 119. Upon the death of a member registered in a branch register his share or other interest shall, so far as relates to any tax or duty payable to the Crown in respect of the estate of a deceased person in New Zealand, be deemed not to be part of his estate in New Zealand for or in respect of which probate or letters of administration is or are to be granted, if he died domiciled in any part of the United Kingdom; but, if he died domiciled elsewhere, then such share or interest shall be deemed to be part of such estate in like manner as if he were registered in the register of members kept at the principal office of the company and had been domiciled in New Zealand at the date of his death.

Transfer not to be registered until duty paid. 120. No company shall register any transfer or other transmission of any share or interest of any deceased member domiciled elsewhere than in the United Kingdom except on production of a certificate from the Minister of Stamp Duties that all duty payable in respect of such share or interest has been paid or provided for; and if any company fails to comply with this provision any such duty payable as aforesaid shall be deemed to be a debt due by the company to the Crown, and may be recovered accordingly.

Protection of members.

Restriction on alteration of terms of prospectus. 121. A company shall not prior to the statutory meeting vary the terms of a contract referred to in the prospectus, except subject to the approval of the statutory meeting. — E. § 83; V. f. (No. 1482) 107; and see notes to § 74—81, *supra*.

Power to alter regulations by special resolution. 122. 1. Subject to the provisions of this Act and to the conditions contained in the memorandum of association, any company may in general meeting, from time to time, by passing a special resolution, alter all or any of the regulations of the company contained in the articles of association, or in Table A in the second Schedule hereto, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company. 2. Any regulations so made by special resolution shall be deemed to be regulations of the company and of the same validity as if they had been originally contained in the articles of association, and may in like manner be altered or modified by any subsequent special resolution. — E. § 13; N. S. W. a. (No. 40 of 1899) 72; V. a. (No. 1074) 51; T. a. (33 Vic. No. 22) 55; S. A. a. (No. 557) 48, 50; Q. e. (27 Vic. No. 4) 50; W. A. a. (56 Vic. No. 8) 50.

Deed of sale open for inspection in certain cases. 123. Where any land or other property or any rights are acquired by a company otherwise than for cash, the deed of sale or transfer, or a true copy thereof, shall at all times be kept at the registered office of the company, and shall there be open to the inspection of any shareholder free of charge during the usual business hours. — See notes to § 122, *supra*.

Protection of creditors.

Registered office of company. 124. 1. Every company shall have a registered office, to which all communications and notices may be addressed. 2. If any company carries on business without having such an office it shall be liable to a fine not exceeding five pounds for every day during which business is so carried on. — E. § 62; N. S. W. a. (No. 40 of 1899) 227; V. a. (No. 1074) 40; T. a. (33 Vic. No. 22) 43; S. A. a. (No. 557) 38 (1, 3); Q. e. (27 Vic. No. 4) 38; W. A. a. (56 Vic. No. 8) 39 (1, 3).

Notice of situation of registered office. 125. 1. Notice of the situation of such registered office, and of any change therein, shall be given to the Registrar

and recorded by him. 2. Until such notice is given, the company shall be deemed not to have complied with the provisions of this Act with respect to having a registered office. — E. § 62; N. S. W. (No. 40 of 1899) 231; V. a. (No. 1074) 40; T. a. (33 Vic. No. 22) 44; S. A. a. (No. 557) 38 (2); Q. e. (27 Vic. No. 4) 39; W. A. a. (56 Vic. No. 8) 39 (2).

Publication of name by company. 126. 1. Every limited company, whether limited by shares or by guarantee, shall paint or affix its name, and shall keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, and in letters easily legible. 2. It shall also have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications issued by it, and in all bills of exchange, promissory notes, indorsements, cheques, and orders for money or goods purporting to be signed by it or on its behalf, and in all its bills of parcels, invoices, receipts, and letters of credit. — E. § 63; N. S. W. a. (No. 40 of 1899) 67; V. a. (No. 1074) 41; T. a. (33 Vic. No. 22) 45; S. A. (No. 557) 40 (1); Q. e. (27 Vic. No. 4) 40; W. A. a. (56 Vic. No. 8) 41 (1).

Fine on non-publication of name. 127. If any such company does not paint or affix, and keep painted or affixed, its name in manner aforesaid, it shall be liable to a fine not exceeding five pounds for not so painting or affixing its name, and to a further fine not exceeding five pounds for every day during which such name is not so kept painted or affixed; and every director and manager of the company who knowingly and wilfully authorises or permits such default is liable to the like fine. — E. 25 & 26 Vic. c. 89, § 42; N. S. W. a. (No. 40 of 1899) 68; V. a. (No. 1074) 42; T. a. (33 Vic. No. 22) 46; S. A. a. (No. 557) 40 (2); Q. e. (27 Vic. No. 4) 41; W. A. a. (56 Vic. No. 8) 41 (2).

On omitting name from documents, etc. 128. If any director, manager, or officer of such company, or any person on its behalf, uses or authorises the use of any seal, purporting to be a seal of the company, whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of such company, or signs or authorises to be signed on behalf of such company any bill of exchange, promissory note, indorsement, cheque, or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company wherein its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding fifty pounds, and shall further be personally liable on any such bill of exchange, promissory note, cheque, or order for money or goods, unless the same is duly paid by the company. — See notes to § 127, *supra*.

Register of mortgages. 129. 1. Every limited company shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge. 2. If any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall be liable to a fine not exceeding fifty pounds. 3. The register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused any officer of the company refusing the same, and every director and manager of the company authorising or knowingly and wilfully permitting such refusal, shall be liable to a fine not exceeding five pounds, and a further fine not exceeding two pounds for every day during which such refusal continues; and, in addition to the above penalty, the Court may order the register to be forthwith produced for inspection. — E. §§ 100, 101; N. S. W. a. (No. 40 of 1899) 243; V. a. (No. 1074) 43; T. a. (33 Vic. No. 22) 47; S. A. a. (No. 557) 41; Q. e. (27 Vic. No. 4) 42; W. A. a. (56 Vic. No. 8) 43. — Cp. E. 7 Edw. 7, c. 50, § 10—18.

Mortgage not operative unless registered. 130. 1. Every mortgage as hereinafter defined given by any company, whether registered in or out of New Zealand, shall, so far as any security on the company's assets or undertaking is thereby conferred, be void against the liquidator and any creditor of the company unless within twenty-one days after the execution of the instrument creating the mortgage the same is registered by lodging in the office of the Registrar a copy of the instrument creating the mortgage, accompanied by an affidavit of the execution of the instrument and verifying the copy as a true copy. 2. In the case of a mortgage executed out of New Zealand by or on behalf of any company affecting or intending to affect

assets in New Zealand, it shall be sufficient compliance with this section if the mortgage is registered within three months after the execution thereof; but any such mortgage registered more than twenty-one days after the execution thereof shall, as to assets in New Zealand, take effect only subject to any rights acquired prior to actual registration thereof. 3. The Registrar shall keep with respect to each company a register-book, wherein he shall, on payment of the prescribed fee, enter with respect to every mortgage registered under this section the date of the mortgage, the amount secured by it, short particulars of the property mortgaged, and the names of the persons entitled to the charge; and such register and the documents entered therein shall be open to inspection by all persons on payment of a fee of one shilling. 4. Where a series of debentures containing or constituting any mortgage, to the benefit of which the holders thereof are entitled *pari passu*, is created by a company, it shall be sufficient to lodge with the Registrar a copy of one debenture of the series, verified as aforesaid, and to enter on the register: a) The total amount secured by the whole series; and b) The dates of the resolutions creating the series, and of the covering deed (if any) by which the security is created or defined; and c) A general description of the property mortgaged; and d) The names of the trustees (if any) for the debenture-holders. 5. Where more than one issue is made of debentures in the same series, the company may require the Registrar to enter in the register the date and amount of any particular issue; but an omission to do this shall not affect the validity of the debentures issued. 6. The registration of a mortgage in pursuance of this section shall not be invalid merely by reason of any accidental or inadvertent omission or misstatement in the copy lodged as hereby required, provided that it discloses in substance the nature of the security, and that such omissions or misstatements are not of such a nature as to be likely to mislead or deceive any person to his prejudice. 7. The Court, on being satisfied that the omission to register any mortgage, or that the omission or misstatement of any particular in any such copy as aforesaid, was accidental or due to inadvertence or some other sufficient cause, or is not of such a nature as to prejudice the position of creditors or members of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of any person interested, and on such terms and conditions as it deems expedient, order that such omission or misstatement be rectified. 8. The Registrar shall, if required, give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured; and such certificate shall be conclusive proof that the requirements of this section as to registration have been complied with. 9. For every registration under this section (including the registration of a series of debentures) there shall be paid to the Registrar a fee of five shillings. 10. If any director or manager of a company makes default in complying with any of the requirements of this section, he shall, without prejudice to any other liability he may incur thereby, be liable to a fine not exceeding fifty pounds. 11. For the purposes of this section "mortgage" means: a) A mortgage or charge for the purpose of securing any issue of debentures; or b) A mortgage or charge on uncalled capital of the company; or c) A mortgage or charge created or evidenced by an instrument that if executed by an individual would require registration as a bill of sale; or d) A floating charge on the undertaking or assets of the company. 12. For the purposes of this and the next succeeding section, "Registrar" means the Registrar or Assistant Registrar, as the case may be, in the district wherein the company itself is registered, if it is registered in New Zealand, or, if it is registered out of New Zealand, then the Registrar at Wellington; and the office for registration of mortgages and charges shall be ascertained accordingly. 13. In the case of mortgages or charges registered prior to the passing of this Act in the office of the Registrar at Wellington, or of the Assistant Registrar in any district, the validity of such registration shall not be affected by reason merely of the situation of the office, but the Registrar at Wellington shall cause all such registrations and the entries affecting the same to be transferred to the appropriate office under this Act, to the intent that in each office there may be a complete record of all registrations and entries. — E. § 93; V. f. (No. 1482) 53.

Memorandum of satisfaction. 131. 1. The Registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage was given has been paid or satisfied, enter on the register a memorandum of satisfaction in respect of such mortgage. 2. The Court, on application made to it for that purpose,

and on being satisfied that the debt, claim, or liability for which any registered mortgage was given has been paid or satisfied, may order that a memorandum of satisfaction be entered on the register, and the Registrar shall enter the same accordingly. — E. § 97; V. f. (No. 1482) 53 (17).

Liability of members of company carrying on business with less than seven members. 132. If any company carries on business when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognisant of the fact that it is so carrying on business with fewer than seven members, is severally liable for the payment of all the debts of the company contracted during such time, and may be sued for the same without the joinder in the action of any other member. — E. § 115; N. S. W. a. (No. 40 of 1899) 245; V. a. (No. 1074) 49; T. a. (33 Vic. No. 22) 52; S. A. a. (No. 557) 46; Q. e. (27 Vic. No. 4) 47; W. A. a. (56 Vic. No. 8) 48. — A certificate of incorporation is conclusive of the fact of incorporation, although there are less than seven incorporating members. — Cp. § 26 (4), *supra*.

Audit of accounts.

Appointment of auditors. 133. 1. Every company shall at each annual general meeting appoint an auditor or auditors, to hold office until the next annual general meeting. 2. If no such appointment is made at the annual general meeting, the Minister of Internal Affairs may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services. 3. A director or officer of the company shall not be capable of being appointed auditor of the company. 4. The first auditors of the company may be appointed by the directors at any time before the annual general meeting, and if so appointed shall hold office until that meeting, first unless previously removed by a resolution of the members in general meeting, in which case of the members at such meeting may appoint auditors. 5. The directors of a company may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors (if any) may act. — E. § 112; N. S. W. a. (No. 40 of 1899) Sched. II. A. 83—87, 89—91; V. f. (No. 1482) 30; T. a. (33 Vic. No. 22) Sched. I. A. 83—87, 89—91; S. A. a. (No. 557) Sched. II. A. 86—90, 92—94; Q. e. (27 Vic. No. 4) Sched. I. A. 83—87, 89—91; W. A. a. (56 Vic. No. 8) Sched. II. A. 85—89, 91—93.

Remuneration of auditors. 134. The remuneration of the auditors shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors. — E. § 112 (6); N. S. W. a. (No. 40 of 1899) Sched. II. A. 88; V. f. (No. 1482) 30 (3); T. a. (33 Vic. No. 22) Sched. I. A. 88; S. A. a. (No. 557) Sched. II. A. 91; Q. e. (27 Vic. No. 4) Sched. I. A. 88; W. A. a. (56 Vic. No. 8) Sched. II. A. 90.

Rights and duties of auditors. 135. 1. Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of his duties. 2. The auditors shall sign a certificate at the foot of the balance-sheet stating whether or not all their requirements as auditors have been complied with, and shall make a report to the members on the accounts examined by them and on every balance-sheet laid before the company in general meeting during their tenure of office. 3. In every such report the auditors shall state whether, in their opinion, the balance-sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company; and such report shall be read before the company in general meeting. — E. § 113; N. S. W. a. (No. 40 of 1899) Sched. II. A. 92—94; V. f. (No. 1482) 33; T. a. (33 Vic. No. 22) Sched. I. A. 92—94; S. A. a. (No. 557) Sched. I. A. 95—97; Q. e. (27 Vic. No. 4) Sched. I. A. 92—94; W. A. a. (56 Vic. No. 8) Sched. I. A. 94—96. — Cp. E. 7 Edw. 7, c. 50, § 19.

Where Audit Office is appointed. 136. In any case where the Audit Office is appointed by the Minister of Internal Affairs under section one hundred and thirty-three hereof to be the auditor of a company the Audit Office shall have, in respect of such company, its accounts, and all persons dealing with its moneys, the same powers as if the company were a local authority within the meaning of *The Public Revenues Act, 1908*.

Special audit.

Audit of accounts of companies. 137. The Governor, from time to time, on the application: a) Of a majority in number representing two-thirds in value of the shareholders of any limited company or company limited by guarantee; or b) Of a majority in number of the shareholders of any unlimited company, shall order the accounts of such company to be audited by the Audit Office; and, if so required by the applicants, shall order a valuation to be made of the assets of the company. — V. f. (No. 1482) 37.

Powers of Audit Office. 138. 1. Where any such order has been made it shall be the duty of all officers and agents of the company to produce for the examination of the audit officer appointed to inspect the accounts of any company all books and documents in their custody or power. 2. Any such audit officer may examine on oath the officers and agents of the company as to its business, and may administer such oath accordingly. 3. Every officer or agent of the company who refuses to produce any such book or document, or to answer any question relating to the affairs of the company, is liable for each offence to a fine not exceeding fifty pounds, or to imprisonment for a term not exceeding three months. 4. Upon the conclusion of the examination the Audit Office shall report to the directors of the company, who shall place such report before the shareholders of the company at its next meeting, and in case the directors fail so to do they shall severally be liable to a fine not exceeding fifty pounds, to be recovered in a summary manner on the prosecution of any shareholder of the company. — V. f. (No. 1482) 38—41, 43.

Expenses of audit to be paid by company. 139. 1. The costs and expenses of any such audit, or of any such audit and valuation, as aforesaid shall be according to the scale fixed by the Governor in Council for the audit of the accounts of local bodies. 2. Such costs and expenses shall be borne by the company, and shall be paid out of its assets into the Public Account and form part of the Consolidated Fund. 3. If the company fails to pay such costs and expenses the Audit Office shall cause the same to be recovered as a debt due to the Crown in any Court of competent jurisdiction.

*Inspection of affairs of company.***Inquiry into affairs of company by inspectors appointed by Supreme Court.**

140. The Court may appoint one or more competent inspectors to inquire into the affairs of any company, and to report thereon in such manner as the Court directs, upon application as follows, that is to say: a) In the case of a company having a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued. b) In the case of a company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered in the register of the company as members. — E. § 109 (1); N. S. W. a. (No. 40 of 1899) 252; V. a. (No. 1074) 57; T. a. (33 Vic. No. 22) 62; S. A. a. (No. 557) 54; Q. e. (27 Vic. No. 4) 56; W. A. a. (56 Vic. No. 8) 56. — The mere fact of ruinous loss sustained by the company is not in itself a ground for granting an application under this section. There must be some definite allegation of misconduct or some suggestion that the directors or a majority of the shareholders are concealing facts, or are acting unfairly to the minority. — *In re The Mercantile Finance Co.*, 12 L. R. (N. Z.) 248.

Application for inquiry to be supported by evidence. 141. The application shall be supported by such evidence as the Court requires, for the purpose of showing that the applicants have good reason for requiring such inquiry to be made, and that they are not actuated by malicious motives in instituting the same. — E. § 109 (2); N. S. W. a. (No. 40 of 1899) 253; V. a. (No. 1074) 58; T. a. (33 Vic. No. 22) 63; S. A. a. (No. 557) 55; Q. e. (27 Vic. No. 4) 57; W. A. a. (56 Vic. No. 8) 57.

Security for costs may be required. 142. The Court may also require the applicants to give security for payment of the costs of the inquiry before appointing an inspector. — See notes to § 141, *supra*.

Inspection of books and examination of officers. Report of result of inquiry.

143. 1. It shall be the duty of all officers and agents of the company to produce for examination by the inspector all books and documents in their custody or power. 2. An inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly. 3. If any

officer or agent refuses to produce any such book or document, or to answer any question relating to the affairs of the company, he shall be liable to a fine not exceeding five pounds in respect of each offence. 4. Upon the conclusion of the inquiry the inspector shall report his opinion to the Court. 5. Such report shall be written or printed, as the Courts direct. 6. A copy shall be forwarded by the Registrar of the Court to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inquiry was made, be delivered to them or to any one or more of them for the use of all such members. 7. All expenses of and incidental to any such inquiry as aforesaid shall be defrayed by the members upon whose application the inquiry was made, unless the Court directs the same to be paid out of the assets of the company, which it is hereby authorised to do. — E. § 109 (3—7); N. S. W. a. (No. 40 of 1899) 254, 255; V. a. (No. 1074) 59, 60; T. a. (33 Vic. No. 22) 64, 65; S. A. a. (No. 557) 56, 57; Q. e. (27 Vic. No. 4) 58, 59; W. A. a. (56 Vic. No. 8) 58, 59.

Power of company to appoint inspectors. 144. 1. Any company may, by special resolution, appoint one or more inspectors for the purpose of examining into the affairs of the company. 2. The inspector so appointed shall have the same powers and perform the same duties as inspectors appointed by the Court, save only that instead of making his report to the Court he shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties in case of refusal to produce any book or document hereby required to be produced to such inspector, or to answer any question, as they would incur if such inspector had been appointed by the Court. — E. § 110; N. S. W. a. (No. 40 of 1899) 256; V. a. (No. 1074) 61; T. a. (33 Vic. No. 22) 66; S. A. a. (No. 557) 58; Q. e. (27 Vic. No. 4) 60; W. A. a. (56 Vic. No. 8) 60.

Report of inspector to be evidence. 145. A copy of the report of an inspector, authenticated by the seal of the company into whose affairs he has made inquiry, shall be admissible in any legal proceeding as evidence of the opinion of the inspector as to any matter contained in such report. — E. § 111; N. S. W. a. (No. 40 of 1899) 257; V. a. (No. 1074) 62; T. a. (33 Vic. No. 22) 67; S. A. a. (No. 557) 59; Q. e. (27 Vic. No. 4) 61; W. A. a. (56 Vic. No. 8) 60.

Contracts.

Contracts on behalf of companies, how to be made. 146. An contract that, if made between private persons: a) Must be by deed, shall, when made by a company, be in writing under the common seal of the company; b) Must be in writing signed by the parties to be charged therewith, may, when made by a company, be in writing signed by any person acting on behalf of and under the express or implied authority of the company; c) Might be made verbally without writing, may, when made by a company, be made verbally without writing by any person acting on behalf of and under the express or implied authority of the company. — E. § 76; N. S. W. a. (No. 40 of 1899) 241; V. a. (No. 1074) 47; T. a. (33 Vic. No. 22) 60; S. A. a. (No. 557) 44; Q. e. (27 Vic. No. 4) 47; W. A. a. (56 Vic. No. 8) 46.

How to be varied. 147. All contracts made according to the provisions herein contained may in the same way be varied or discharged, and shall be effectual in law, and shall be binding on the company and its successors, and all other parties thereto, their executors or administrators, as the case may be. — See note to § 146. *supra*.

Promissory notes and bills of exchange. 148. A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company if made, accepted, or indorsed in the name of the company by any person acting under the express or implied authority of the company, or if made accepted, or indorsed by or on behalf of or on account of the company by any person acting under the authority of the company. — E. § 77; N. S. W. a. (No. 40 of 1899) 244; V. a. (No. 1074) 48; T. a. (33 Vic. No. 22) 51; S. A. a. (No. 557) 45; Q. e. (27 Vic. No. 4) 46; W. A. a. (56 Vic. No. 8) 47.

Execution of instruments abroad. 149. Any company may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney to execute instruments on its behalf in any place in or beyond New Zealand; and every instrument signed by such attorney on behalf of the company shall be binding on the company, and have the same

effect as if it were a contract or engagement of the company made or executed as hereinbefore provided. — E. § 78; and see notes to § 150, *infra*.

Execution of instruments under seal or by attorney. 150. 1. A company, whether incorporated in or out of New Zealand, may by deed under its common seal, or under its official seal for use in New Zealand, appoint an attorney to act for the company in or out of New Zealand. 2. Any deed, contract, or instrument evidencing or carrying into effect any matter within the powers of the company, and whether executed before or after the passing of this Act: a) To which the common or official seal of the company is affixed; or b) Which is executed in the name of the company by any person who has been appointed the attorney of the company, and has at the time of such execution made a statutory declaration that he is the attorney of the company acting under a power of attorney specified by him, that he has executed such deed, contract, or instrument under the powers thereby conferred, and that he has not at the time of such declaration received any notice of the revocation of such power of attorney by the dissolution of the company or otherwise, shall be deemed to have been duly executed by the company, and shall bind the company; and all persons dealing in good faith without notice of any irregularity shall be entitled to presume the regular and proper execution of such deed, contract, or instrument and to act accordingly. — E. § 79; N. S. W. a. (No. 40 of 1899) 251; V. a. (No. 1074) 56; T. a. (33 Vic. No. 22) 61; S. A. a. (No. 557) 53; Q. e. (27 Vic. No. 4) 55; W. A. a. (56 Vic. No. 8) 55.

Notices.

Service of notices on company. 151. Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same at the company's registered office, or by sending it through the post in a prepaid and registered letter addressed to the company at that office. — E. § 116; N. S. W. a. (No. 40 of 1899) 228; V. a. (No. 1074) 63; T. a. (33 Vic. No. 22) 68; S. A. a. (No. 557) 203, 240; Q. e. (27 Vic. No. 4) 62; W. A. a. (56 Vic. No. 8) 205.

Service of notices by post. 152. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid and registered letter into the post-office. — N. S. W. a. (No. 40 of 1899) 229; V. a. (No. 1074) 64; T. a. (33 Vic. No. 22) 69; S. A. a. (No. 557) 241; Q. e. (27 Vic. No. 4) 63; W. A. a. (56 Vic. No. 8) 241.

Authentication of notices by company. 153. Any summons, notice, order, or proceeding requiring authentication by the company may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company. — E. § 117; N. S. W. a. (No. 40 of 1899) 230; V. a. (No. 1074) 65; T. a. (33 Vic. No. 22) 70; S. A. a. (No. 557) 242; Q. e. (27 Vic. No. 4) 64, W. A. a. (56 Vic. No. 8) 242.

Minutes of meetings.

Evidence of proceedings at meetings. 154. 1. Every company shall cause minutes of all resolutions and proceedings of general meetings of the company and of the directors to be duly entered in books to be from time to time provided for the purpose. 2. Any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings taken, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings. 3. Until the contrary is proved, every general meeting of the company, or meeting of directors, shall be deemed to be duly held and convened, and all resolutions or proceedings passed or taken thereat, or recorded in such minutes to be duly passed and taken, and all appointments of directors or liquidators shall be deemed to be valid; and all acts done by such directors or liquidators shall be valid, notwithstanding any defect afterwards discovered in their appointments or qualifications. — E. §§ 71, 74; N. S. W. a. (No. 40 of 1899) 260; V. a. (No. 1074) 67; T. a. (33 Vic. No. 22) 73; S. A. a. (No. 557) 60; Q. e. (27 Vic. No. 4) 67; W. A. a. (56 Vic. No. 8) 62. — Where a liquidator whose appointment is defective settles a list of contributories and makes calls, a contributory sued on these calls is not estopped by delay from impeaching the liquidator's title. But where the appointment of the liquidator is acquiesced in the calls are validated. In respect to the validating effect of this section there is no difference between acts of internal and external management. — *In re Equitable Insurance Association of New Zealand, Simpson's Case*, 11 L. R. (N. Z.) 605.

Legal proceedings.

Security for costs to be given by plaintiff company in certain cases. 155. Where a limited company is plaintiff in any action or other legal proceeding and there appears by any credible testimony to be reason to believe that if the defendant is successful in his defence the assets of the company will be insufficient to pay his costs, any Court or Judge having jurisdiction in the matter may require sufficient security to be given for such costs, and may stay all proceedings until such security is given. — E. § 278; N. S. W. a. (No. 40 of 1899) 259; V. a. (No. 1074) 68; T. a. (33 Vic. No. 22) 74; S. A. a. (No. 557) 62; Q. e. (27 Vic. No. 4) 68; W. A. a. (56 Vic. No. 8) 64.

Allegations in actions against members. 156. In any action brought by a company against any member to recover any call or other moneys due from him in his character of member it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company and is indebted to the company in respect of a call made, or other moneys due, whereby an action has accrued to the company. — N. S. W. a. (No. 40 of 1899) 73; V. a. (No. 1074) 69; T. a. (33 Vic. No. 22) 75; S. A. a. (No. 557) 61; Q. e. (27 Vic. No. 4) 69; W. A. a. (56 Vic. No. 8) 63.

Power of assignee to sue and be sued. 157. Any person to whom anything in action belonging to a company is assigned in pursuance of this Act may sue or be sued in respect thereof in his own name. — N. S. W. a. (No. 40 of 1899) 156; V. a. (No. 1074) 142; T. a. (33 Vic. No. 22) 184; S. A. a. (No. 557) 166; Q. e. (27 Vic. No. 4) 147; W. A. a. (56 Vic. No. 8) 168.

Recovery of fines. 158. All fines under this Act or any Part thereof may be recovered in a summary way before any two or more Justices in the manner provided in *The Justices of the Peace Act, 1908*. — N. S. W. a. (No. 40 of 1899) 258; V. f. (No. 1482) 173 (1); T. a. (33 Vic. No. 22) 71; S. A. a. (No. 557) 244, 245; Q. e. (27 Vic. No. 4) 65; W. A. a. (56 Vic. No. 8) 244, 245.

Arbitration.

Companies may refer matters to arbitration. 159. Any company may from time to time agree to refer and may refer to arbitration, in accordance with the provisions of *The Arbitration Act, 1908*, any existing or future difference, question, or other matter in dispute between itself and any other company, association, or person, and the parties to the arbitration may delegate to the person or persons to whom the reference is made any power to settle any terms, or to determine any matter capable of being lawfully settled or determined by the parties themselves, or by the directors of such companies. — E. § 119; N. S. W. a. (No. 40 of 1899) 75, 76; T. a. (33 Vic. No. 22) 77—105; S. A. a. (No. 557) 64; Q. e. (27 Vic. No. 4) 71, 72; W. A. a. (56 Vic. No. 8) 66.

Change of name of company.

Power of companies to change name. 160. 1. Any company, with the sanction of a special resolution of the company, and with the approval of the Court, may change its name. 2. Before any such change is made the Court may cause such inquiries to be made as it thinks fit, and may direct such notices to be given either to particular persons or generally, in such manner as it deems necessary, and may summon before it any person interested or claiming to be interested in the matter, and, after hearing all such persons as it deems to be so interested, may make an order changing the name of such company, either upon or without conditions, or may decline to make such order. 3. Upon the order of the Court being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. 4. Such alteration of name shall not affect any rights or obligations of the company, or render defective any legal proceedings instituted by or against the company; and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name. — E. § 8; N. S. W. a. (No. 40 of 1899) 225; V. a. (No. 1074) 22; T. a. (33 Vic. No. 22) 13; S. A. a. (No. 557) 65; Q. e. (27 Vic. No. 4) 12; W. A. a. (56 Vic. No. 8) 67. — See § 27, *supra*. For a case where it was held that sufficient evidence of the adoption of the resolution for changing the name of the company had not been produced, see *In re Drury Coal Co., Ltd.*, 28 L. R. (N. Z.) 105.

Change of constitution and objects of company.

Deed of settlement defined. 161. In the next two succeeding sections "deed of settlement" includes any instrument constituting or regulating the company, not being an Act of the General Assembly, Royal Charter, or Letters Patent.

Company may alter its constitution, subject to confirmation by Court. Court to be satisfied as to certain points. Order may be made on terms. Court to exercise discretion as to interests of members and of creditors. Court may confirm any proposed alteration in certain cases. 162. 1. A company may, by special resolution, alter the provisions of its memorandum of association or deed of settlement relating to the objects of the company, so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid relating to the objects of the company, but in no case shall any such alteration take effect until confirmed by the Court on petition. 2. Before confirming any such alteration the Court must be satisfied: a) That sufficient notice has been given to every holder of debentures of the company, and any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and b) That with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained, or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court: Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this subsection. 3. An order confirming any such alteration may be made on such terms and subject to such conditions as to costs and otherwise as the Court deems fit. 4. The Court shall in exercising its direction under this Act have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to its satisfaction for the purchase of the interests of dissentient members, and may give such directions and make such orders as it thinks expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided that it shall not be lawful to expend any part of the capital of the company in any such purchase. 5. The Court may confirm, either wholly or in part, any such alteration as aforesaid relating to the objects of the company if it appears that the alteration is required in order to enable the company c) To carry on its business more economically or more efficiently; or d) To attain its main purpose by new or improved means; or e) To enlarge or change the local area of its operations; or f) To carry on any business or businesses that under existing circumstances may conveniently or advantageously be combined with the business of the company; or g) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement. — E. §§ 263, 264; N. S. W. c. (No. 22 of 1906) 3—5; V. f. (No. 1482) 77—81; T. c. (59 Vic. No. 19) 5; S. A. a. (No. 557) 66; Q. g. (55 Vic. No. 10) 4; W. A. a. (56 Vic. No. 8) 68. — The Court has jurisdiction under this section to entertain an application made by a company registered under the *Joint Stock Companies Act, 1860*, and to confirm an alteration in the objects of the company. — In re The New Zealand Accident Insurance Co., 12 L. R. (N. Z.) 326. The powers of the Court to alter the objects in the memorandum of association are confined to those enumerated in this section. — In re Southern Cross Biscuit Co., 8 Gaz. L. R. (N. Z.) 714.

Registration of order, and consequences thereof. 163. 1. Where a company has altered the provisions of its memorandum of association or deed of settlement relating to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, or together with a printed copy of the substituted memorandum and articles of association, as the case may be, shall be delivered by the company to the Registrar within fifteen days from the date of the order. 2. The Registrar shall register such document, and certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to such alteration and the confirmation thereof have been complied with, and thenceforth (but

subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company; or, as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under Part II. of this Act with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company.

3. If a company makes default in delivering to the Registrar any document required by this section to be delivered to him, the company shall be liable to a fine not exceeding ten pounds for every day during which it is in default. — E. § 264; N. S. W. c. (No. 22 of 1906) 6; V. f. (No. 1482) 82—86; T. c. (59 Vic. No. 19) 6; S. A. a. (No. 557) 67; Q. g. (55 Vic. No. 10) 5; W. A. a. (56 Vic. No. 8) 69.

Part V. Private Companies.

Private companies may be registered as such. 164. Notwithstanding anything in this Act, it shall be lawful for any number of persons not exceeding twenty-five associated for any lawful purpose, by subscribing their names to a memorandum of association as hereinafter specified, and otherwise complying with the requirements of this Act in respect of registration, to form a private company having its capital divided into shares, and having the liability of its members limited by shares, or by shares and by guarantee. — For the provisions of the English law relating to private companies, see 7 Edw. 7, c. 50, § 37.

Certain provisions of the Act to apply. 165. Excepting as mentioned in this Part of this Act, all the provisions of this Act applicable to companies whose liability is limited by shares or by guarantee shall apply to private companies, according to the nature thereof.

The memorandum of association. 166. 1. Where a company is formed under this Part of this Act the memorandum of association shall state: a) The name of the proposed company, with the addition of the word "limited" as the last word of such name; b) That the company is a private company; c) The objects for which the company is proposed to be established; d) That the liability of the members is limited; e) The amount of share capital with which the company proposes to be registered. 2. All the share capital with which a private company is registered shall be subscribed for in the memorandum of association. 3. The memorandum of association shall, in case the liability of the members is limited by shares and by guarantee, contain a declaration that each member undertakes to contribute to the assets of the company (in addition to any amount which he may be liable to contribute in respect of his shares), in the event of the same being wound up during the time that he is a member or within one year afterwards, such sum as may be required, not exceeding an amount specified in respect of each member in the memorandum of association, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of contributories among themselves.

Certificate of incorporation. 167. Every certificate of incorporation issued in respect of a private company shall state expressly that it is so issued.

Certain provisions of the Act not to apply. Change of members to be registered. Register of members. 168. 1. It shall not be obligatory on a private company to register its articles of association (if any) or its regulations, nor to forward to the Registrar the list and summary as required by subsection two of section one hundred and one hereof. 2. Every private company shall, within fourteen days after any alteration is made in its register of members, forward to the Registrar a complete list of such members, showing their names, addresses, and occupations (if any), and the number of shares held by each, and such list shall be signed by the manager or secretary; and any default in compliance with this subsection shall be deemed to be a default in compliance with section one hundred and one hereof, and shall be punishable accordingly. 3. Every private company shall permit any creditor or member thereof to inspect at all reasonable times its register of members and directors and the summary required by section one hundred and one hereof. Any company committing a breach of this subsection shall be liable to a fine not exceeding one hundred pounds, unless (in the case of a creditor) it pays the debt due to such creditor. 4. The following provisions of this Act do not apply to private companies, namely: Section thirty-five, as to transfers of shares in respect

of which calls are unpaid; Sections seventy to seventy-three, as to directors' qualifications, payment of calls, and directors' fees; Section eighty-seven, as to the statutory meeting; Sections ninety-five to ninety-seven, relating to allotment of shares and returns of allotment and filing contracts as to fully or partly paid-up shares; Section ninety-nine, relating to commencement of business; Section one hundred and thirty-two, as to carrying on business with fewer than seven members. 5. It shall not be lawful for a private company or for the directors thereof to issue any prospectus inviting subscriptions for shares in its capital. 6. Anything that may be done by a company registered under Part II. hereof by resolution, special resolution, or extraordinary resolution may be done by a private company by an entry in its minute-book, signed by at least three-fourths of the members, holding in the aggregate at least three-fourths of the shares in the capital of the company, and the company shall forthwith on any such entry being signed forward to every member who has not signed the same a copy thereof, including the signatures to such entry.

Private company carrying on business with more than twenty-five members, or less than two. 169. 1. If any private company carries on business with a greater number of members than twenty-five, every member of such company shall be liable to a fine of five pounds for every day during which it so carries on business. 2. If any private company carries on business for a period of six months when the number of its members shall be reduced to one only, such member shall be personally liable for the payment of the whole debts of the company contracted during the time it so carries on business, and may be sued for the same in any Court of competent jurisdiction.

Winding-up of private companies. 170. 1. If it appears to the Court on the winding-up of a private company that any member of such company acting in its affairs has, prior to such winding-up, knowingly done or omitted any act, or been party or privy to any act or omission, which, if such member were a sole trader and had been adjudged bankrupt, would render him liable to the penalty imposed by section one hundred and thirty-eight of *The Bankruptcy Act, 1908*, the Court may, if it finds that such act or omission has in fact prejudiced the creditors or any creditor of the company, order any such member to pay to the liquidator of the company such sum in addition to the amount for which he may be liable under the constitution of the company as to the Court may seem just. 2. The Court may by the same or any subsequent order direct that such sum or any part thereof shall be applied in payment of the claims of any particular creditor or creditors of the company, on such terms (if any) as the Court may direct. 3. The powers conferred by this section shall be in addition to any other powers which the Court may have on winding up.

Application of Part to existing companies. 171. 1. Any company incorporated prior to the coming into operation of this Act, or under Part II. of this Act, the number of whose members is or may at any time hereafter be or be reduced to twenty-five or any less number, may be registered under this Part of this Act on lodging with the Registrar an application, signed by all the members of the company, stating that: a) The persons therein named are the only members of the company; b) Such members hold shares to the full amount of the nominal capital of the company; c) They have made a fair valuation of the company's assets and liabilities, and that the company is solvent; d) The members of the company desire that the company be re-registered under this Part of this Act. 2. Such application shall be verified by the statutory declaration of every member of the company, and the company shall lodge with the application the company's certificate of incorporation, and a certificate by two auditors, made not more than three months prior to the date of the application, that they have investigated the affairs of the company, and that the company is at the date of such certificate a solvent company. 3. The Registrar shall, on payment of a fee of five pounds, enter on the memorandum of association of such company a minute that the company is re-registered under this Part of this Act as a private company, and shall enter a similar minute on the certificate of incorporation of the company, and shall sign each such minute and state therein the date thereof, and thereupon the same consequences shall follow as to the rights, powers, and duties of the company as if the same had originally been incorporated under this Part of this Act; and the said minutes shall be conclusive evidence of the same matters as a certificate of incorporation; but such re-registration shall not alter the identity of the corporation, or affect the

rights of the company or of any person against the company. 4. The Registrar shall make all such entries in the register as shall be necessary to give effect to and evidence such re-registration as aforesaid.

Private company may be registered as a public company. 172. 1. Any company registered under this Part of the Act, whether originally incorporated hereunder or not, may be re-registered as a company under Part II. hereof on lodging with the Registrar an application, signed by all the members of such company, stating that the persons therein named are the only members of such company, and that it is desired to register the company as a company limited by shares or limited by guarantee under Part II. hereof, as the case may be. 2. Such application shall be verified by the statutory declaration of every member of the company, and the company shall lodge with the said application its certificate of incorporation and a copy of its regulations signed by all the members of the company. 3. The Registrar shall, on payment of the fee of five pounds, enter on the memorandum of association of such company a minute that the company is re-registered under Part II. hereof, and shall enter a similar minute on the certificate of incorporation of the company, and shall sign each such minute and state therein the date thereof, and thereupon the same consequences shall follow as to the rights, powers, and duties of the company under this Act as on incorporation under Part II. of this Act; and the said minutes shall be conclusive evidence of the same matters as a certificate of incorporation; but such re-registration shall not alter the identity of the corporation or affect the rights of the company or of any person against the company. 4. The Registrar shall make all such entries in the register as shall be necessary to give effect to and evidence such re-registration as aforesaid. 5. Any company re-registered under this section shall forthwith on such re-registration forward to the Registrar the list and summary required by section one hundred and one hereof to be forwarded to the Registrar, and a default in compliance with this requirement shall be a default in compliance with section one hundred and one hereof, and be punishable accordingly.

Part VI. Winding-up of Companies and Associations.¹⁾

Contributory defined. 173. The term "contributory" means every person liable to contribute to the assets of a company in the event of the same being wound up; and also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, includes any person alleged to be a contributory. — E. §§ 124, 268; N. S. W. a. (No. 40 of 1899) 79; V. a. (No. 1074) 71, 176, 184; T. a. (33 Vic. No. 22) 106; c. (59 Vic. No. 19) 21; S. A. a. (No. 557) 3; Q. v. (27 Vic. No. 4) 73, 190, 194; W. A. a. (56 Vic. No. 8) 3.

Nature of liability of contributory. 174. The liability of any person to contribute to the assets of a company in the event of the same being wound up shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful, in the case of the bankruptcy of any contributory, to prove against his estate the estimated amount of his liability to future calls as well as his ascertained liability for calls already made. — E. §§ 125, 268; N. S. W. a. (No. 40 of 1899) 80; V. a. (No. 1074) 72, 176 (5), 184; T. a. (33 Vic. No. 22) 107, c. (59 Vic. No. 19) 21; S. A. a. (No. 557) 101, 190; Q. e. (27 Vic. No. 4) 74, 190 (5), 194; W. A. a. (56 Vic. No. 8) 103, 192.

Contributories in case of death. 175. If a contributory dies, either before or after he is placed on the list of contributories hereinafter mentioned, his executors or administrators shall be liable in due course of administration to contribute to the assets of the company in discharge of his liability, and shall be deemed to be contributories accordingly. — E. §§ 126, 269; N. S. W. a. (No. 40 of 1899) 81; V. a. (No. 1074) 73, 176 (5), 184; T. a. (33 Vic. No. 22) 108, c. (59 Vic. No. 19) 21 (2); S. A. a. (No. 557) 102, 190 (2); Q. e. (27 Vic. No. 4) 75, 190 (5), 194; W. A. a. (56 Vic. No. 8) 104, 192.

Contributories in case of bankruptcy. 176. If a contributory becomes bankrupt, either before or after he is placed on the list of contributories, the assignee of his

¹⁾ See also the *Winding-up Rules, 1887*, adopted by the Supreme Court, and published in the *New Zealand Gazette*, 8th December 1887, No. 76, p. 1492. Also reprinted in Morison, *Law of Limited Liability Companies in New Zealand*, pp. 470, et seq.

estate shall be deemed to represent him for all the purpose of the winding-up, and to be a contributory accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise allow to be paid out of his assets in due course of law any moneys due from such bankrupt in respect to his liability to contribute to the assets of the company being wound up. — E. §§ 126, 269; N. S. W. a. (No. 40 of 1899) 82; V. a. (No. 1074) 74, 176 (5), 184; T. a. (33 Vic. No. 22) 109, c. (59 Vic. No. 19) 21 (1); S. A. a. (No. 557) 103, 190 (1); Q. e. (27 Vic. No. 4) 76, 190 (5), 194; W. A. a. (56 Vic. No. 8) 105, 192.

Winding-up by the Court.

When company may be wound up by Court. 177. A company may be wound up by the Court under the following circumstances, that is to say: a) If the company passes a special resolution requiring the company to be wound up by the Court; or b) If the company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year; or c) If the members are reduced in number to less than seven; or d) If the company is unable to pay its debts; or e) If the Court is of opinion that it is just and equitable that the company should be wound up. — E. §§ 129, 268; N. S. W. a. (No. 40 of 1899) 84; V. a. (No. 1074) 76, 183 (3); T. a. (33 Vic. No. 22) 111, c. (59 Vic. No. 19) 20 (3); S. A. a. (No. 557) 105, 189 (3); Q. e. (27 Vic. No. 4) 78, 193 (3); W. A. a. (56 Vic. No. 8) 107, 191 (3). — Winding-up “means a procedure in the first place for collecting and realising the assets of the company and applying them to the discharge of its liabilities and in the second place for adjusting the rights of shareholders among themselves.” — *In re Extended Wakatu G. M. Co., Ltd.*, 13 L. R. (N. Z.) 544. (Per Richmond, J.) The English Courts will take into consideration any circumstances alleged in the petition and supported by evidence showing that an investigation into the promotion or formation of the company or circumstances attending the issuing of debentures or shares may be of advantage to unsecured creditors [*In re Krasnopolsky Co.*, (1892), 2 Ch. 174]. *Quære*, how far this principle would be adopted in New Zealand, there being no statute in force corresponding to the English Companies (Winding-up) Act, 1890 (53 & 54 Vic. c. 63). — Morison, *Law of Limited Liability Companies in New Zealand*, p. 296.

When company deemed unable to pay its debts. 178. A company shall be deemed to be unable to pay its debts: a) Whenever a creditor, by assignment or otherwise, to whom the company is indebted at law or in equity in a sum exceeding fifty pounds then due has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due, and the company for the space of three weeks succeeding the service of such demand has failed to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor; b) Whenever execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part; c) Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts. — E. §§ 130, 268; N. S. W. a. (No. 40 of 1899) 86; V. a. (No. 1074) 77, 183 (4); T. a. (33 Vic. No. 22) 112, c. (59 Vic. No. 19) 20 (4); S. A. a. (No. 557) 106, 189 (4); W. A. a. (56 Vic. No. 8) 108, 191 (4). — Cp. E. 7 Edw. 7, c. 50, § 28, 29.

Application for winding-up to be made by petition. 179. 1. Any application to the Court for the winding-up of a company shall be by petition presented by the company, or by any one or more creditors or contributories of the company, or by all or any of the above parties, together or separately; and every order made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if made upon the joint petition of a creditor and a contributory. 2. For the purposes of this section “creditor” includes every person who, if the company is ordered to be wound up, would be entitled to prove against the company in respect of any debt or claim, but nothing herein shall entitle a person to present a petition under paragraph a) or b) of the last preceding section in respect of a debt not due and presently payable. 3. The holder of a share warrant to bearer, or of any stock, may present a petition as if he were a contributory whose shares were fully paid up, and shall have all the rights of such a contributory. — E. § 137; N. S. W. a. (No. 40 of 1899) 89; V. a. (No. 1074) 78; T. a. (33 Vic. No. 22) 114; S. A. a. (No. 557) 107; Q. e. (27 Vic. No. 4) 81; W. A. a. (56 Vic. No. 8) 109. — Under the corresponding section of the English Act it has been held that the minimum amount of £ 50 must be claimed before a petition under this section can be maintained. — *In re Milford Docks Co.*, 23 Ch. D. 292. Cp. § 178, *supra*.

When contributory not entitled to present petition. 180. A contributory of a company shall not be entitled to present a petition for winding up such company unless the members of the company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him and registered in his name for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder. — E. § 137; N. S. W. a. (No. 40 of 1899) 90; T. a. (33 Vic. No. 22) 115; S. A. a. (No. 557) 107; Q. f. (53 Vic. No. 18) 43; W. A. a. (56 Vic. No. 8) 109.

Commencement of winding-up by Court. 181. A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up. — E. § 139; N. S. W. a. (No. 40 of 1899) 91; V. a. (No. 1074) 79; T. a. (33 Vic. No. 22) 117; S. A. a. (No. 557) 109; Q. e. (27 Vic. No. 4) 83; W. A. a. (56 Vic. No. 8) 111.

Provisional liquidator. 182. The Court may at any time after the presentation of a petition for winding up a company appoint a provisional liquidator of the assets of the company, and may limit and restrict his powers by the order appointing him, or by any subsequent order. — See notes to § 243, *infra*.

Order of Court on hearing petition. 183. 1. Upon hearing the petition the Court may either grant or dismiss the same, with or without costs, or adjourn the hearing conditionally or unconditionally, and make any interim order or any other order that it deems just. 2. A copy of every such order shall forthwith be forwarded by the company to the Registrar, who shall make a minute thereof in his books relating to the company. — E. §§ 141, 143; N. S. W. a. (No. 40 of 1899) 93, 96; V. a. (No. 1074) 81, 83; T. a. (33 Vic. No. 22) 119, 121; S. A. a. (No. 557) 111, 113; Q. e. (27 Vic. No. 4) 85, 87; W. A. a. (56 Vic. No. 8) 113, 115. — Where a petitioner alleges that it is just and equitable that the company be wound up the facts on which he relies must be set forth in the petition. Rules 265 and 266 of the Supreme Court Code, relating to amendments, do not apply, and the petition, if demurrable will be dismissed. — *In re Sutherland Manure Co., Ltd.*, 11 L. R. (N. Z.) 460.

Power of Court to stay proceedings. 184. The Court may, at any time after an order has been made for winding up a company, upon the application by motion of the liquidator or any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit. — E. § 144; N. S. W. a. (No. 40 of 1899) 97; V. a. (No. 1074) 84; T. a. (33 Vic. No. 22) 122; S. A. a. (No. 557) 149; Q. e. (27 Vic. No. 4) 88; W. A. a. (56 Vic. No. 8) 116.

Court may regard wishes of creditors or contributories. 185. 1. The Court may, as to all the matters relating to the winding-up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as it thinks fit for the purpose of ascertaining their wishes, and may appoint a person to act as chairman at any such meeting, and to report the result of such meeting to the Court. 2. In the case of creditors, regard is to be had to the amount or value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company. — E. § 145; N. S. W. a. (No. 40 of 1899) 100; V. a. (No. 1074) 86; T. a. (33 Vic. No. 22) 124; S. A. a. (No. 557) 153 (1) (4); Q. e. (27 Vic. No. 4) 90; W. A. a. (56 Vic. No. 8) 156.

Official liquidators.

Official Assignee to be official liquidator of company. 186. Where a company is ordered to be wound up by the Court, the Official Assignee under *The Bankruptcy Act, 1908*, of the district wherein the company's principal office is situate shall, by force of this Act, and without the necessity of any appointment or order, be the sole liquidator (under the style of "the Official Liquidator") of the company. — E. § 149; N. S. W. a. (No. 40 of 1899) 101; V. a. (No. 1074) 88; T. a. (33 Vic. No. 22) 125; S. A. a. (No. 557) 115 (1—4); Q. e. (27 Vic. No. 4) 91; W. A. a. (56 Vic. No. 8) S. 118 (1—4). — Where it appears that there has been mismanagement of the affairs of the company, which requires investigation, the Court will not appoint any of the directors or managers as official liquidators, even though recommended by a majority of the shareholders. — *In re Colonial Bank of New Zealand*, 14 L. R. (N. Z.) 484.

Court may appoint supervisors to assist in winding-up. 187. In any such case the Court may, on the application of any creditor or contributory of the company, appoint any number of fit persons (not exceeding three) to be supervisors for the purpose of assisting and advising the official liquidator in the winding-up of the company. — See notes to § 186, *supra*; and cp. V. f. (No. 1482) 134 *et seq.*

Vacancy in office of supervisor. 188. Any supervisor may resign by notice in writing to the official liquidator, or may be removed by the Court on the application of the official liquidator or of any creditor or contributory on due cause shown, and any vacancy occasioned thereby or by the death of a supervisor may be filled up by the Court. — E. § 149; N. S. W. a. (No. 40 of 1899) 102; V. a. (No. 1074) 88; T. a. (33 Vic. No. 22) 126; S. A. a. (No. 557) 115 (5, 6); Q. e. (27 Vic. No. 4) 92; W. A. a. (56 Vic. No. 8) 115 (5, 6).

Settlement of questions between official liquidator and supervisors. 189. The official liquidator shall have regard to the views and advice of the supervisors; and, if any question or difference arises between him and them or any of them, the Court, on the application of the official liquidator or of any supervisor, may give directions in the matter.

Official liquidator may appoint solicitor. 190. With the consent of the supervisors (if any) the official liquidator may from time to time employ a solicitor to assist him in the performance of his duties. — E. § 151 (1); N. S. W. a. (No. 40 of 1899) 106; T. a. (33 Vic. No. 22) 130; S. A. a. (No. 557) Sched. VII (11); Q. e. (27 Vic. No. 4) 96; W. A. a. (56 Vic. No. 8) Sched. VII (11).

Remuneration to be paid out of assets of company. 191. 1. The official liquidator and each supervisor shall be entitled to such remuneration out of the assets of the company as is fixed by the Court. 2. Such remuneration shall be a first charge on the assets of the company, and, in the case of the Official Assignee, shall be paid into the Public Account and form part of the Consolidated Fund. — See notes to § 188, *supra*.

Style and duties of official liquidator. 192. The official liquidator shall be described by the style of the Official Liquidator of the particular company in respect of which he is appointed, and not by his individual name; he shall take into his custody or under his control all the property, effects, and things in action to which the company is or appears to be entitled, and shall perform such duties in reference to the winding-up of the company as are imposed by the Court. — E. § 149; N. S. W. a. (No. 40 of 1899) 103; V. a. (No. 1074) 89; T. a. (33 Vic. No. 22) 127; S. A. a. (No. 557) 116; Q. e. (27 Vic. No. 4) 93; W. A. a. (56 Vic. No. 8) 119.

Deputy official liquidator. 193. 1. On the application of the official liquidator, the Court may, in the course of the winding-up of a company, appoint the Deputy Assignee or other fit person to act in lieu of the official liquidator, under the style of the "Deputy Official Liquidator"; and in such case, and for the purposes of such winding-up, the person so appointed shall have all the powers and functions of the official liquidator. 2. In every case where the deputy official liquidator acts in the winding-up of a company he shall be entitled to receive, out of moneys to be appropriated by Parliament, such remuneration as the Governor directs, in no case exceeding the amount paid into the Public Account in respect of the official liquidator's remuneration for such winding-up.

Official liquidator's accounts and audit. 194. The provisions of section one hundred and forty-nine of *The Bankruptcy Act, 1908*, relating to accounts and audit, shall *mutatis mutandis*, apply to the Official Assignee as official liquidator.

Powers of official liquidator. 195. The official liquidator shall have power, with the sanction of the Court, to do the following things: a) Bring or defend any action, prosecution, or other proceeding, civil or criminal, in the name and on behalf of the company; b) Carry on the business of the company so far as is necessary for the beneficial winding-up of the same; c) Sell the real and personal property, effects, and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels; d) Do all acts and execute in the name and on behalf of the company all deeds, receipts, and other documents, and for that purpose use when necessary the company's seal; e) Prove, rank, claim, and draw a dividend in the matter of the bankruptcy of any contributory for any balance against the estate of such contributory, and take and receive dividends in respect of such balance as a separate debt due from such bankrupt, and rateably with the other separate

creditors; f) Draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company; and the drawing, accepting, making, or indorsing of every such bill of exchange or promissory note on behalf of the company shall render the company liable thereon in like manner as if such bill or note had been drawn, accepted, made, or indorsed by or on behalf of such company in the course of carrying on the business thereof; g) Raise from time to time, upon the security of the assets of the company, any requisite sum or sums of money; h) Take out, if necessary, in his official name, letters of administration to any deceased contributory, and do in the like name any other act necessary for obtaining payment of any moneys due from a contributory or from his estate that cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any moneys due from a contributory, such moneys shall, for the purpose of enabling him to take out such letters or recover such moneys, be deemed to be due to the official liquidator himself; i) Do and execute all other things necessary for winding up the affairs of the company and distributing its assets. — E. § 151; N. S. W. a. (No. 40 of 1899) 104; V. a. (No. 1074) 90; T. a. (33 Vic. No. 22) 128; S. A. a. (No. 557) 117; Q. e. (27 Vic. No. 4) 94; W. A. a. (56 Vic. No. 8) 120. — Cp. *Tait v. Mapourika, etc., Co.*, 22 L. R. (N. Z.), 540.

Discretion of official liquidator. 196. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court. — E. § 151 (4); N. S. W. a. (No. 40 of 1899) 105; V. a. (No. 1074) 91; T. a. (33 Vic. No. 22) 129; S. A. a. (No. 557) 118; Q. e. (27 Vic. No. 4) 95; W. A. a. (56 Vic. No. 8) 121.

Ordinary powers of the Court.

Collection and application of assets. 197. As soon as may be after making an order for winding up the company the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities. — E. § 163 (1); N. S. W. a. (No. 40 of 1899) 107; V. a. (No. 1074) 93; T. a. (33 Vic. No. 22) 132; S. A. a. (No. 557) 119; Q. e. (27 Vic. No. 4) 97; W. A. a. (56 Vic. No. 8) 122.

Provision as to representative contributories. 198. In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others. — E. § 163 (2); N. S. W. a. (No. 40 of 1899) 108; V. a. (No. 1074) 94; T. a. (33 Vic. No. 22) 132; S. A. a. (No. 557) 120; Q. e. (27 Vic. No. 4) 98; W. A. a. (56 Vic. No. 8) 123.

Power of Court to require delivery of property. To order payment of debts by contributory. To make calls. 199. The Court may, at any time after making an order for winding up a company: a) Require any contributory, trustee, receiver, banker, or agent or officer of the company to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, any sum or balance, books, papers, estate, or effects which happen to be in his hands for the time being, and appearing *prima facie* to be the property of the company, to or into the hands of the official liquidator; b) Make an order on any contributory directing payment to be made in the manner mentioned in the order of any moneys due to the company from him, or from the estate of the person whom he represents, exclusive of any moneys that he or the estate of the person whom he represents is liable to contribute by virtue of any call made by the Court under this Act; and in making such order the Court may, when the company is not limited, allow to such contributory by way of set-off any moneys due from the company to him, or to the estate he represents, on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit: Provided that when all the creditors of any company, whether limited or unlimited have been paid in full, any moneys due on any account from the company to any contributory may be allowed to him by way of set-off against any subsequent call or calls; c) Make calls on and order payment thereof by all or any of the contributories to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the adjustment of the rights of the contributories amongst themselves; and in making any such call the Court may take into con-

sideration the likelihood that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same; and it may make such calls either before or after it has ascertained the sufficiency of the company's assets. — E. §§ 164—166; N. S. W. a. (No. 40 of 1899) 109—111; V. a. (No. 1074) 95—97; T. a. (33 Vic. No. 22) 133—135; S. A. a. (No. 557) 121—123; Q. e. (27 Vic. No. 4) 99—101; W. A. a. (56 Vic. No. 8) 124—126. — Where a liquidator assigns an unpaid call due by a contributory, who afterwards becomes bankrupt, the assignee of the call can not claim to be paid out of a set-off which the bankrupt had against the company. He must prove on the bankrupt estate, leaving the bankrupt's assignee to recover the amount due from the company. — *In re Matheson Bros. & Co., Ltd.*, L. R. 3 S. C. (N. Z.) 323. See also *Bank of Australia v. Zohrab*, 10 L. R. (N. Z.) 310. Where a fully paid-up shareholder is by mistake paid more than he is entitled to receive, he may be placed on the list of contributories as to such amount. — *In re Kaitangata Railway & Coal Co., Ltd.*, 22 L. R. (N. Z.) 588.

To order payment into bank. 200. The Court may order any contributory, purchaser, or other person from whom money is due to the company, to pay the same into such bank carrying on business in New Zealand as the Court appoints, to the account of the official liquidator, instead of to the official liquidator, and such order may be enforced in the same manner as if it directed payment to the official liquidator. — E. § 167; N. S. W. a. (No. 40 of 1899) 112; V. a. (No. 1074) 98; T. a. (33 Vic. No. 22) 136; S. A. a. (No. 557) 124; Q. e. (27 Vic. No. 4) 102; W. A. a. (56 Vic. No. 8) 127.

Regulation of account with Court. 201. The Court may give such directions as it thinks fit concerning the keeping of the account of any moneys, bills, notes, or other securities so ordered to be paid into any bank, and concerning the payment and delivery in or investment and payment and delivery out of the same. — E. § 167; N. S. W. a. (No. 40 of 1899) 113; V. a. (No. 1074) 99; T. a. (33 Vic. No. 22) 137; S. A. a. (No. 557) 125; Q. e. (27 Vic. No. 4) 103; W. A. a. (56 Vic. No. 8) 128.

Where representative contributory fails to pay moneys ordered. 202. If any person made a contributory as representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the estate of such deceased contributory, and of compelling payment thereout of the moneys due. — N. S. W. a. (No. 40 of 1899) 114; V. a. (No. 1074) 100; T. a. (33 Vic. No. 22) 138; S. A. a. (No. 557) 161; Q. e. (27 Vic. No. 4) 104; W. A. a. (56 Vic. No. 8) 163.

Order conclusive evidence. 203. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the moneys (if any) thereby appearing to be due or ordered to be paid are due; and all other pertinent matters stated in such order shall be taken to be truly stated as against all persons and in all proceedings. — E. § 168; N. S. W. a. (No. 40 of 1899) 115; V. a. (No. 1074) 101; T. a. (33 Vic. No. 22) 139; S. A. a. (No. 557) 126; Q. e. (27 Vic. No. 4) 105; W. A. a. (56 Vic. No. 8) 129.

Court may exclude creditors not proving within certain time. 204. The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debt or claim is proved. — E. § 169; N. S. W. a. (No. 40 of 1899) 116; V. a. (No. 1074) 102; T. a. (33 Vic. No. 22) 140; S. A. a. (No. 557) 127; Q. e. (27 Vic. No. 4) 106; W. A. a. (56 Vic. No. 8) 130. — The creditor may be estopped from proving a claim. — *Herald Newspaper Co. of Otago, Ltd., Stanford's Case*, 7 L. R. (N. Z.) 484.

Court to adjust rights of contributories. 205. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto. — E. § 170; N. S. W. a. (No. 40 of 1899) 117; V. a. (No. 1074) 103; T. a. (33 Vic. No. 22) 141; S. A. a. (No. 557) 128; Q. e. (27 Vic. No. 4) 107; W. A. a. (56 Vic. No. 8) 131.

Court may determine priority of costs. 206. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in the winding-up, in such order of priority as the Court thinks just. — E. § 171; N. S. W. a. (No. 40 of 1899) 118; V. a. (No. 1074) 104; T. a. (33 Vic. No. 22) 142; S. A. a. (No. 557) 160; Q. e. (27 Vic. No. 4) 108; W. A. a. (56 Vic. No. 8) 163.

Dissolution of company. 207. When the affairs of the company have been completely wound up the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly.

— E. § 172; N. S. W. a. (No. 40 of 1899) 119; V. a. (No. 1074) 105; T. a. (33 Vic. No. 22) 143; S. A. a. (No. 557) 130; Q. e. (27 Vic. No. 4) 109; W. A. a. (56 Vic. No. 8) 133.

Report to Registrar. 208. 1. Any order so made shall be reported by the official liquidator to the Registrar, who shall make in his books a minute of the dissolution of such company. 2. If the official liquidator makes default under this section he shall be liable to a fine not exceeding five pounds for every day during which he is so in default. — E. § 172; N. S. W. a. (No. 40 of 1899) 120, 121; V. a. (No. 1074) 106, 107; T. a. (33 Vic. No. 22) 144, 145; S. A. a. (No. 557) 131, 132; Q. e. (27 Vic. No. 4) 110, 111; W. A. a. (56 Vic. No. 8) 134, 135.

Petition to constitute a "suit pending". 209. Any petition for winding up a company by the Court shall constitute a suit pending within the meaning of *The Deeds Registration Act, 1908*, provided the same is duly registered in the manner in which memorials of suits pending may be registered under that Act. — N. S. W. a. (No. 40 of 1899) 122; V. a. (No. 1074) 108; T. a. (33 Vic. No. 22) 146; S. A. a. (No. 557) 133; W. A. a. (56 Vic. No. 8) 136.

Extraordinary powers of the Court.

Court may summon persons suspected of having property of company. 210. 1. The Court may, after it has made an order for winding up the company, summon before it any officer of the company or any person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade dealings, estate, or effects of the company; and the Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents relating to the company in his custody or power. 2. If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended and brought before it for examination. 3. Where any person claims any lien on papers, deeds, or writings, or documents produced by him, such production shall be without prejudice to such lien; and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien. — E. § 174; N. S. W. a. (No. 40 of 1899) 123; V. a. (No. 1074) 109; T. a. (33 Vic. No. 22) 147; S. A. a. (No. 557) 156 (1—3); Q. e. (27 Vic. No. 4) 112; W. A. a. (56 Vic. No. 8) 159 (1—3). — The court will not exercise the powers conferred under this section, unless the persons capable of giving the desired information have refused to give the desired information, or the information they have given is unsatisfactory. — *In re Ngunguru Coal Co., Ltd.*, 18 L. R. (N. Z.) 256.

Examination of parties by Court. 211. The Court may examine on oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid, concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same. — E. § 174; N. S. W. a. (No. 40 of 1899) 124; V. a. (No. 1074) 110; T. a. (33 Vic. No. 22) 148; S. A. a. (No. 557) 156 (4); Q. e. (27 Vic. No. 4) 113; W. A. a. (56 Vic. No. 8) 159 (4).

Arrest of contributory about to abscond, etc. 212. The Court, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory to such company is about to quit New Zealand, or abscond, or to remove or conceal any of his goods or chattels for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, may cause such contributory to be arrested, and his books, papers, moneys, securities or moneys, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court orders. — E. § 176; N. S. W. a. (No. 40 of 1899) 125; V. a. (No. 1074) 111; T. a. (33 Vic. No. 22) 149; S. A. a. (No. 557) 157; Q. e. (27 Vic. No. 4) 114; W. A. a. (56 Vic. No. 8) 160.

Powers of Court cumulative. 213. Any powers conferred by this Act on the Court shall be deemed to be in addition to and not in restriction of any other powers the Court may have of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, for the recovery of any call or other sums due from such contributory or debtor or his estate, and such proceedings may be instituted accordingly. — E. § 177; N. S. W. a. (No. 40 of 1899) 126; V. a. (No. 1074) 112; T. a. (33 Vic. No. 22) 150; S. A. a. (No. 557) 158; Q. e. (27 Vic. No. 4) 115; W. A. a. (56 Vic. No. 8) 161.

Enforcement of and appeals from orders.

Power to enforce orders. 214. All orders made by the Court under this Act may be enforced in the same manner in which orders made in any action pending in the Court may be enforced. — E. § 178; N. S. W. a. (No. 40 of 1899) 127; V. a. (No. 1074) 158; T. a. (33 Vic. No. 22) 151; S. A. a. (No. 557) 186; Q. e. (27 Vic. No. 4) 116; W. A. a. (56 Vic. No. 8) 188.

Appeals from orders. 215. Rehearings of and appeals from any order or decision made or given in the matter of the winding-up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals are had from any order or decision of the Court in cases within its ordinary jurisdiction: Provided that no such rehearing or appeal shall be heard unless notice of the same is given within twenty-eight days after the order complained of has been made, or within such further time as may be allowed by the Court in the case of a rehearing, or by the Court of Appeal in the case of an appeal. — E. § 181; N. S. W. a. (No. 40 of 1899) 128; T. a. (33 Vic. No. 22) 152; S. A. a. (No. 557) 247, 248; Q. e. (27 Vic. No. 4) 117; W. A. a. (56 Vic. No. 8) 247, 248.

Examination of witnesses by commission. 216. The Court may make all such orders and do all such things for and incidental to the examination of witnesses before any person or persons either in or beyond New Zealand as it may make or do in its ordinary jurisdiction. — E. § 228; N. S. W. a. (No. 40 of 1899) 129; T. a. (33 Vic. No. 22) 153—155; Q. e. (27 Vic. No. 4) 118.

Reference of proceedings to District Court.

Winding-up may be referred to District Court. 217. Where the Court makes an order for winding up a company, it may, if it thinks fit, direct all subsequent proceedings to be taken in a District Court, and thereupon such District Court shall for the purpose of such winding-up be deemed to be “the Court” within the meaning of this Act, and shall have all the jurisdiction and powers of the Supreme Court. — N. S. W. a. (No. 40 of 1899) 266. — In this case the official liquidators should be appointed by the District Court. — *Drysdale v. Liquidators of the Bruce Patent Oatmeal & Milling Co., Ltd.*, 10 L. R. (N. Z.) 116. Cp. note to § 219, *infra*.

Transfer of winding-up from one District Court to another. 218. If during the progress of the winding-up it appears to the Supreme Court that the same can be more conveniently carried on in any other District Court, it shall be competent for the Supreme Court to transfer the same to such other District Court, and thereupon the winding-up shall proceed in such other District Court. — N. S. W. a. (No. 40 of 1899) 267.

Parties aggrieved may appeal. 219. 1. Any party in a winding-up who is dissatisfied with any determination or direction of a Judge of a District Court may appeal therefrom to the Supreme Court. 2. The party appealing shall, within twenty-eight days after such determination or direction, give notice of appeal to the other party or his solicitor, and deposit with the Clerk of the District Court the sum of ten pounds as security for the costs of the appeal. 3. The Supreme Court may make such final or other decree or order, and also such order with respect to the costs of the appeal, as it thinks fit. — N. S. W. a. (No. 40 of 1899) 268. — Where a District Court Judge wrongly dismisses an application to place a shareholder on the list of contributories, he may grant a rehearing, and an appeal is not necessary. — *In re Bruce's Patent Oatmeal & Milling Co., Brayshaw's Case*, 8 L. R. (N. Z.) 483. In subsection (3) “final” means “unappealable”. — *In re Bruce's Patent Oatmeal & Milling Co., Drysdale's Case*, 8 L. R. (N. Z.) 598. Although properly where proceedings are transferred to a District Court this Court should appoint the liquidators, yet where no objection was taken to the liquidators appointed by the Supreme Court until after the company had been in liquidation for two years it was *held*, that the objection came too late. — *Drysdale v. Liquidators of the Bruce Patent Oatmeal & Milling Co., Ltd.*, 10 L. R. (N. Z.) 116.

Voluntary winding-up.

When company may be wound up voluntarily. 220. A company may be wound up voluntarily: a) Where, on the expiration of any period fixed by the memorandum or articles of association for the duration of the company, or on the happening of any event on the happening of which it is provided by the memorandum or articles of association that the company shall be dissolved, the company in general meeting passes a resolution requiring the company to be wound up voluntarily; b) Where the company passes a special resolution requiring the company to be wound up

voluntarily; c) Where the company passes an extraordinary resolution to the effect that it is proved to its satisfaction that the company can not by reason of its liabilities continue its business, and that it is advisable to wind up the same. — E. § 182; N. S. W. a. (No. 40 of 1899) 130; V. a. (No. 1074) 114, 115; T. a. (33 Vic. No. 22) 156; S. A. a. (No. 557) 134; Q. e. (27 Vic. No. 4) 119; W. A. a. (56 Vic. No. 8) 137. — Cp. E. 7, Edw. 7, c. 50, § 26, 27.

Commencement of voluntary winding-up. 221. A voluntary winding-up shall be deemed to commence on the passing of the resolution authorising such winding-up. — E. § 183; N. S. W. a. (No. 40 of 1899) 131; V. a. (No. 1074) 116; T. a. (33 Vic. No. 22) 157; S. A. a. (No. 557) 135; Q. e. (27 Vic. No. 4) 120; W. A. a. (56 Vic. No. 8) 138. — A person may be estopped from denying the validity of a resolution for voluntary winding-up — In re Herald Newspaper Co. of Otago, Ltd., Stanford's Case, 7 L. R. (N. Z.) 484. A resolution to wind up a company voluntarily is good though passed at a general meeting of the company convened without a formal resolution of the board of directors, if it appear that it was convened by the authority of the latter. — In re C. & J. Coombs & Co., Ltd., 21 L. R. (N. Z.) 104.

Effect of voluntary winding-up on status of company. 222. Where a company is wound up voluntarily it shall from the date of the commencement of such winding-up cease to carry on its business except in so far as is required for the beneficial winding-up thereof; and all transfers of shares (except transfers made to or with the sanction of the liquidators) and all alterations in the status of the members of the company taking place after the commencement of such winding-up shall be void; but its corporate state and all its corporate powers shall, notwithstanding its regulations provide otherwise, continue until the affairs of the company are wound up. — E. § 184; N. S. W. a. (No. 40 of 1899) 132; V. a. (No. 1074) 117; T. a. (33 Vic. No. 22) 158; S. A. a. (No. 557) 150; Q. e. (27 Vic. No. 4) 121; W. A. a. (56 Vic. No. 8) 139.

Notice of resolution to wind up voluntarily. 223. Notice of any special or extraordinary resolution passed for winding up a company voluntarily shall be gazetted. — E. § 185; N. S. W. a. (No. 40 of 1899) 133; V. a. (No. 1074) 118; T. a. (33 Vic. No. 22) 159; S. A. a. (No. 557) 136; Q. e. (27 Vic. No. 4) 122; W. A. a. (56 Vic. No. 8) 140.

Consequences of voluntary winding-up. 224. On the voluntary winding-up of a company: a) Liquidators shall be appointed for the purpose of winding-up the affairs of the company and distributing its assets; b) The liquidators shall pay the debts of the company, and adjust the rights of the contributories amongst themselves; c) The assets of the company, subject to the preferential claims provided for by section two hundred and forty-nine hereof, shall be applied rateably in satisfaction of its liabilities, and the surplus (if any) shall, unless the memorandum of association or the regulations of the company provide otherwise, be distributed amongst the members according to their rights and interests in the company; d) The company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him; e) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him; f) Upon the appointment of liquidators all the powers of the directors shall cease except in so far as the company in general meeting, or the liquidators, sanction the continuance of such powers; g) Where several liquidators are appointed every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any two or more of them; h) The liquidators may, without the sanction of the Court, exercise all powers by this Act given to the Official Liquidator; i) The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company, and any list so settled shall be *prima facie* evidence of the liability of the persons named therein to be contributories; j) The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the company's assets, call on all or any of the contributories to pay to the extent of their liability all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may, in making a call, take into consideration the likelihood that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same. — E. § 186; N. S. W. a. (No. 40 of 1899) 134; V. a. (No. 1074) 119; T. a. (33 Vic. No. 22) 160; S. A. a. (No. 557) 137; Q. e. (27 Vic. No. 4) 123; W. A. a. (56 Vic. No. 8) 141.

Company may delegate authority to appoint liquidators. 225. A company about to be wound up voluntarily, or in the course of being so wound up, may by an extraordinary resolution delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators, of any of them, and of supplying any vacancies in the appointment of liquidators, or may by a like resolution enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised; and any act done by the creditors in pursuance of such delegated power shall have the same effect as if done by the company. — E. § 190; N. S. W. a. (No. 40 of 1899) 136; V. a. (No. 1074) 121; T. a. (33 Vic. No. 22) 162; S. A. a. (No. 557) 138; Q. e. (27 Vic. No. 4) 125; W. A. a. (56 Vic. No. 8) 142.

Power for liquidators, creditors, or contributories to apply to Court. 226. 1. Where a company is being wound up voluntarily the liquidators, or any creditor or contributory of the company, may apply to the Court to determine any question arising in the matter of the winding-up, or to exercise in the enforcing of calls or in any other matter all or any of the powers the Court might exercise if the company were being wound up by the Court. 2. On the hearing of such application the Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede to such application on such terms and subject to such conditions as the Court thinks fit, or may make such other order or decree on such application as it thinks just. — E. § 193; N. S. W. a. (No. 40 of 1899) 137; V. a. (No. 1074) 124; T. a. (33 Vic. No. 22) 165; S. A. a. (No. 557) 154; Q. e. (27 Vic. No. 4) 128; W. A. a. (56 Vic. No. 8) 157.

Power of liquidators to call general meeting. 227. Where a company is being wound up voluntarily the liquidators may from time to time during the continuance of such winding-up summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution or extraordinary resolution, or for any other purpose they think fit. — E. § 194; N. S. W. a. (No. 40 of 1899) 138; V. a. (No. 1074) 125; T. a. (33 Vic. No. 22) 166; S. A. a. (No. 557) 141; Q. e. (27 Vic. No. 4) 129; W. A. a. (56 Vic. No. 8) 145.

Vacancy in office of liquidator. 228. 1. Where the office of any liquidator appointed by the company becomes vacant by death, resignation, or otherwise, the company in general meeting may, subject to any arrangement entered into with its creditors, fill up such vacancy. 2. A general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators (if any), or by any contributory of the company. 3. Such meeting shall be deemed to be duly held if held in the manner prescribed by the regulations of the company, or in such other manner as, on application by the continuing liquidator (if any), or by any creditor or contributory of the company, is determined by the Court. — E. § 189; N. S. W. a. (No. 40 of 1899) 139; V. a. (No. 1074) 126; T. a. (33 Vic. No. 22) 167; S. A. a. (No. 557) 142; Q. e. (27 Vic. No. 4) 130; W. A. a. (56 Vic. No. 8) 146.

Power of Court to appoint liquidators. 229. 1. If from any cause there is no liquidator acting in a voluntary winding-up, the Court may, on the application of any creditor or contributory, appoint a liquidator or liquidators. 2. The Court may also, on due cause shown, remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding-up. — E. § 186 (8); N. S. W. a. (No. 40 of 1899) 140; V. a. (No. 1074) 127; T. a. (33 Vic. No. 22) 168; S. A. a. (No. 557) 143; Q. e. (27 Vic. No. 4) 131; W. A. a. (56 Vic. No. 8) 147. — The application for removal of a liquidator in a voluntary winding-up may be made either by a contributory or by a creditor. But where such an application is made by a creditor he should show that it is made on behalf of the other creditors or it must appear that such removal is for the benefit of all the creditors. — *In re White Cliffs Dredging Co., Ltd.*, 11 L. R. (N. Z.) 711. The petition for removal may also be made by a shareholder. Although other matters than personal unfitness of the liquidator may amount to due cause for removal, it must appear that the removal is of substantial advantage to the company. — *In re Mercantile Finance & Agency Co., Ltd.*, 13 L. R. (N. Z.) 472. See this case for circumstances not sufficient to constitute due cause for removal.

Liquidators to account. 230. 1. As soon as the affairs of the company are fully wound up the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the assets of the company disposed of, and thereupon they shall call a general meeting of the company for the purpose of laying the account before such meeting, and offering any explanation they may wish to give. 2. Notice of such meeting, specifying the time, place, and object of the meeting, shall be advertised in the *Gazette*, and a copy of the notice shall be sent by post to every member of the company at least fourteen days before

the meeting. — E. § 195; N. S. W. a. (No. 40 of 1899) 141; V. a. (No. 1074) 128; T. a. (33 Vic. No. 22) 169; S. A. a. (No. 557) 144; Q. e. (27 Vic. No. 4) 132; W. A. a. (56 Vic. No. 8) 148.

Liquidators to report meeting to Registrar. 231. 1. The liquidators shall make a report to the Registrar of such meeting being held, and of the date at which the same was held, and on the expiration of three months from the date of the registration of such report the company shall be deemed to be dissolved. 2. If the liquidators make default under this section they shall be liable to a fine not exceeding five pounds for every day during which such default continues. — E. § 195; N. S. W. a. (No. 40 of 1899) 142, as amended by c. (No. 22 of 1906) 18; V. a. (No. 1074) 129; T. a. (33 Vic. No. 22) 170; S. A. a. (No. 557) 145; Q. e. (27 Vic. No. 4) 133; W. A. a. (56 Vic. No. 8) 149. — Cp. E. 7 Edw. 7, c. 50, § 31.

Costs of voluntary liquidation. 232. All costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidators, shall be payable out of the assets of the company in priority to all other claims. — E. § 196; N. S. W. a. (No. 40 of 1899) 143; V. a. (No. 1074) 130; T. a. (33 Vic. No. 22) 171; S. A. a. (No. 557) 160; Q. e. (27 Vic. No. 4) 134; W. A. a. (56 Vic. No. 8) 163.

Creditor or contributory may insist on winding-up by Court. 233. The voluntary winding-up of a company shall not be a bar to the right of any creditor or contributory of such company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor or contributory will be prejudiced by a voluntary winding-up. — E. § 197; N. S. W. a. (No. 40 of 1899) 144; V. a. (No. 1074) 131; T. a. (33 Vic. No. 22) 172; S. A. a. (No. 557) 146; Q. e. (27 Vic. No. 4) 135; W. A. a. (56 Vic. No. 8) 150.

Court may adopt proceedings of voluntary winding-up. 234. Where a company is being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up. — E. § 198; N. S. W. a. (No. 40 of 1899) 145; V. a. (No. 1074) 132; T. a. (33 Vic. No. 22) 173; S. A. a. (No. 557) 147; Q. e. (27 Vic. No. 4) 136; W. A. a. (56 Vic. No. 8) 151.

Winding-up under supervision of the Court.

Court may direct voluntary winding-up to continue subject to supervision.

Effect of petition for continuance of winding-up subject to supervision. 235. 1. Where a resolution has been passed by a company to wind up voluntarily, the Court, on petition praying that the company be wound up by the Court, or that it be wound up subject to the supervision of the Court, may make an order directing that the winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and conditions, as the Court thinks just. 2. A petition that the company be wound up subject to the supervision of the Court shall for the purpose of giving jurisdiction to the Court be deemed to be a petition for winding up the company by the Court. 3. A winding-up under this section is herein referred to as a "winding-up subject to the supervision of the Court". — E. §§ 199, 200; N. S. W. a. (No. 40 of 1899) 146, 147; V. a. (No. 1074) 133, 134; T. a. (33 Vic. No. 22) 174, 175; Q. e. (27 Vic. No. 4) 137, 138. — See *In re Companies Act, 1903*, 8 N. Z. Gaz. L. R. 493.

Court may have regard to wishes of creditors. 236. 1. The Court may, in determining whether a company is to be wound up altogether by the Court or subject to the supervision of the Court, in the appointment of liquidators, and in all other matters relating to the winding-up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence; and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as it directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting and report the result of such meeting to the Court. 2. In the case of creditors regard shall be had to the amount or value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company. — E. § 201; N. S. W. a. (No. 40 of 1899) 148; V. a. (No. 1074) 135; T. a. (33 Vic. No. 22) 176; S. A. a. (No. 557) 163 (1) (4); Q. e. (27 Vic. No. 4) 139; W. A. a. (56 Vic. No. 8) 152. — The words "value of the debts due to each creditor" mean not what the actual value

of the debt may prove to be, but the amount of the debt. — *In re Manakau Timber Co., Ltd.*, 13 L. R. (N. Z.) 319.

Court may appoint additional liquidators. 237. 1. Where an order is made by the Court for a winding-up subject to the supervision of the Court, the Court may in such order, or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects be in the same position as if they had been appointed by the company. 2. The Court may from time to time remove any liquidators so appointed by the Court, and fill up any vacancy occasioned by such removal or by death or resignation. — E. § 202; N. S. W. a. (No. 40 of 1899) 149; V. a. (No. 1074) 136; T. a. (33 Vic. No. 22) 177; Q. e. (27 Vic. No. 4) 140.

Powers of liquidators. 238. Where an order is made for a winding-up subject to the supervision of the Court, the liquidators appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all their powers without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily. — E. § 203; N. S. W. a. (No. 40 of 1899) 150; V. a. (No. 1074) 137; T. a. (33 Vic. No. 22) 178; Q. e. (27 Vic. No. 4) 141.

Effect of order of Court. 239. Save as aforesaid, an order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of actions and other proceedings, be deemed to be an order for winding up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers it might exercise if an order were made for winding up the company altogether by the Court; and in the construction of the provisions empowering the Court to direct any act or thing to be done to or in favour of the Official Liquidator the expression "Official Liquidator" shall be deemed to include liquidators conducting a winding-up subject to the supervision of the Court. — See notes to § 238, *supra*.

Appointment of voluntary liquidators to be Deputy Official Liquidators. 240. Where an order has been made for the winding-up of a company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the company to be wound up compulsorily, the Court may in such last-mentioned order or in any subsequent order appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be Deputy Official Liquidators. — E. § 204; N. S. W. a. (No. 40 of 1899) 151; T. a. (33 Vic. No. 22) 179; Q. e. (27 Vic. No. 4) 142.

General provisions relating to the winding-up of companies.

Liquidator defined. 241. "Liquidator" in this and the succeeding provisions of this Act relating to winding up companies means the Official Liquidator, or any other liquidator or liquidators, as the case may be.

Dispositions of property, etc., after the commencement of the winding-up to be void. 242. Where any company is being wound up by the Court, or subject to the supervision of the Court, all dispositions of the property, effects, and things in action of the company, and every transfer of shares or alteration in the status of the members of the company, made between the commencement of the winding-up and the order for winding up shall, unless the Court otherwise orders, be void. — N. S. W. a. (No. 40 of 1899) 152; V. a. (No. 1074) 138; T. a. (33 Vic. No. 22) 180; S. A. a. (No. 557) 129; Q. e. (27 Vic. No. 4) 143; W. A. a. (56 Vic. No. 8) 132.

Court may grant injunction. 243. The Court may at any time after the presentation of a petition for winding up a company, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain any proceeding against the company upon such terms as the Court thinks fit. — E. §§ 140, 265, 270; N. S. W. a. (No. 40 of 1899) 92; V. a. (No. 1074) 80, 177, 185; T. a. (33 Vic. No. 22) 118, c. (59 Vic. No. 19) 22; S. A. a. (No. 557) 110, 191; Q. e. (27 Vic. No. 4) 84, 191, 195; W. A. a. (56 Vic. No. 8) 112, 193.

Stay of proceedings. 244. Where an order has been made, or an effective resolution has been passed, for winding up a company: a) No action or other proceeding shall be commenced or proceeded with against the company except with the leave of the Court, and subject to such terms as the Court imposes; b) Any

attachment, distress, or execution thereafter put in force against the assets of the company shall be void. — E. §§ 142, 211, 266, 271; N. S. W. a. (No. 40 of 1899) 94, 95; V. a. (No. 1074) 82, 150, 178, 186; T. a. (33 Vic. No. 22) 120, 198; S. A. a. (No. 557) 112, 177, 189, 192; Q. e. (27 Vic. No. 4) 86, 164, 192, 196; W. A. a. (56 Vic. No. 8) 114, 179, 191. — Where liquidators have been empowered to carry on the business of the company pending its sale as a going concern, and a person to whom the company in liquidation has become indebted has obtained leave of the Court to bring suit for the recovery of his debt, such person is entitled to satisfaction of his judgment out of the assets in the hands of the liquidators in priority to the claims of other creditors to whom the liquidators have become indebted, but who did not obtain leave of the court to sue. — In re Wanganui Meat Preserving Co., Ltd., 12 L. R. (N. Z.) 148. For a case where the question of the leave of the Court to proceed with execution of a warrant of attachment was considered, see In re Poverty Bay Farmers' Cooperative Association, Ltd., 16 L. R. (N. Z.) 695.

Effect of winding-up on share capital of company limited by guarantee. 245. Where a company limited by guarantee and having a capital divided into shares is being wound up, any share capital not called up shall be deemed to be assets of the company, and to be a debt due from each member to the company to the extent of any sums unpaid on any shares held by him, and the Court and the liquidator shall in respect to such uncalled capital have the same powers as are herein conferred on the Court and liquidator in respect of the uncalled capital of a company limited by shares. — E. § 123 (3); N. S. W. a. (No. 40 of 1899) 99, 135; V. a. (No. 1074) 85, 120; T. a. (33 Vic. No. 22) 123, 161; S. A. a. (No. 557) 162; Q. e. (27 Vic. No. 4) 89, 124; W. A. a. (56 Vic. No. 8) 166.

Where company insolvent, rules of bankruptcy to apply. 246. Where, on the winding-up of a company, the assets of the company may prove to be insufficient for the payment of its debts and liabilities and the cost of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and of future and contingent liabilities respectively, as are in force under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who under such law would be entitled to prove for and receive dividends out of the assets of such company may come in under the winding-up and prove their claims against the company accordingly. — E. § 210; N. S. W. a. (No. 40 of 1899) 264; V. a. (No. 1074) 151; T. a. (33 Vic. No. 22) 199; S. A. a. (No. 557) 178; Q. e. (27 Vic. No. 4) 165; W. A. a. (56 Vic. No. 8) 180. — This section does not import into winding-up all the principles of bankruptcy law. It does not enlarge the assets to be administered but merely regulates the rights of the persons entitled to them. — Morison, *Law of Limited Liability Companies in New Zealand*, p. 309.

Fraudulent preference. Transfer of effects to trustees for benefit of creditors to be void. 247. 1. Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would, if made or done by or against any person, be deemed, in the event of his bankruptcy, to have been made or done by way of undue or fraudulent preference of the creditors of such person shall, if made or done by or against any company, be deemed, in the event of such company being wound up, to be made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly. 2. For the purposes of this section the presentation of a petition for winding up a company shall, in the case of a company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding up the company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of bankruptcy in the case of any such person as aforesaid; and any conveyance or assignment made by any company of all its estate and effects to trustees for the benefit of all its creditors shall be void not only as against the creditors of the company and the liquidators, but also as between the parties thereto. — E. § 210; N. S. W. a. (No. 40 of 1899) 263; V. a. (No. 1074) 151; T. a. (33 Vic. No. 22) 199; S. A. a. (No. 557) 178; Q. e. (27 Vic. No. 4) 165; W. A. a. (56 Vic. No. 8) 180. — Cp. In re Langstone's Sheep-Medicine Co., Ltd., 16 L. R. (N. Z.) 206.

Debts and claims to be proved. 248. Where a company is being wound up, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company; a just estimate being made, so far as is possible, of the value of all such debts or claims as may be subject to any contingency, or sound only in damages, or for some other reason do not bear an ascertained value. — E. § 206; N. S. W. a. (No. 40 of 1899) 157; V. a. (No. 1074) 143; T. a. (33 Vic.

No. 22) 185; S. A. a. (No. 557) 167, 168; Q. e. (27 Vic. No. 4) 148; W. A. a. (56 Vic. No. 8) 169, 170. — A limited liability company, being the holder of bills of exchange indorsed to it by another company, which in turn had received the bills from a third company, lodged the bills with its bankers for collection at maturity. At the time of lodging the bills the company depositing them was indebted to its bankers in a sum exceeding the amount of the bills lodged. The bills were dishonoured at maturity, and all the companies subsequently went into liquidation. As between the depositing company and the original givers of the bills they were otherwise satisfied. *Held*, that the bankers were entitled to prove against the assets of the original givers of the bills. — *In re City Saw-Milling Co., Ltd.*, 17 L. R. (N. Z.) 14.

Wages and salary to be preferential claims, and to rank equally. Liquidator to discharge same upon receipt of sufficient assets. 249. 1. In the distribution of the assets of a company being wound up there shall be paid, in priority to other debts: a) All wages or salary of any clerk or servant in respect of services rendered to the company during four months before the commencement of the winding-up, not exceeding fifty pounds; and b) All wages of any labourer or workman in respect of services rendered to the company during two months before the commencement of the winding-up. 2. The foregoing debts shall rank equally one with another, and shall be paid in full, unless the assets of the company are insufficient to meet them, in which case they shall abate in equal proportions. 3. Subject to the retention of such sums as are necessary for the costs of administration or otherwise, the liquidator shall discharge the foregoing debts forthwith, so far as the assets of the company are sufficient to meet them, as and when such assets come into his hands. — E. § 209; N. S. W. a. (No. 40 of 1899) 134 (1); V. f. (No. 1482) 148; T. c. (59 Vic. No. 19) 29; S. A. a. (No. 557) 151; Q. e. (27 Vic. No. 4) 123 (1), h. (56 Vic. No. 24) 21; W. A. a. (56 Vic. No. 8) 147. — An employé who has reduced his claim to judgment may be in a better position than an ordinary employé. — *In re Wanganui Meat Preserving Co., Ltd.*, 12 L. R. (N. Z.) 148.

The books of the company to be evidence. 250. Where any company is being wound up, all books, accounts, and documents of the company and of the liquidator shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded. — E. § 220; N. S. W. a. (No. 40 of 1899) 153; V. a. (No. 1074) 139; T. a. (33 Vic. No. 22) 181; S. A. a. (No. 557) 163; Q. e. (27 Vic. No. 4) 144; W. A. a. (56 Vic. No. 8) 165.

Annual meetings. 251. In the event of the winding-up of a company continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before each such meeting an account showing his acts and dealings and the manner in which the winding-up has been conducted during the preceding year. — See notes to § 227, *supra*.

As to disposal of books, accounts, and documents of the company. 252. Where a company has been wound up and is about to be dissolved, the books, accounts, and documents of the company and of the liquidator may be disposed of in the following manner, that is to say: where the company has been wound up by or subject to the supervision of the Court, in such manner as the Court directs, and where the company has been wound up voluntarily, in such manner as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution no responsibility shall rest on the company, or the liquidator, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same or any of them cannot be produced to any party or parties claiming to be interested therein. — E. § 222; N. S. W. a. (No. 40 of 1899) 154; V. f. (No. 1482) 147 (1, 2); T. a. (33 Vic. No. 22) 182; S. A. a. (No. 557) 164; Q. e. (27 Vic. No. 4) 145; W. A. a. (56 Vic. No. 8) 166.

Inspection of books. 253. Where an order is made for winding up a company by the Court, or subject to the supervision of the Court, the Court may make such order as it thinks fit for the inspection of the company's books and papers by the creditors or contributories, and any books and papers in the possession of the company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise. — E. § 221; N. S. W. a. (No. 40 of 1899) 155; V. a. (No. 1074) 141; T. a. (33 Vic. No. 22) 183; S. A. a. (No. 557) 165; Q. e. (27 Vic. No. 4) 146; W. A. a. (56 Vic. No. 8) 167.

Court may adjudicate against delinquent directors and officers. 254. 1. Where in the course of the winding-up of a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present

director, manager, Official or other Liquidator, or any officer of such company, has misapplied or retained, or has become liable or accountable for any moneys or other assets of the company, or has been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, promoter, manager, liquidator, or other officer, and compel him to repay any moneys or restore any assets so misapplied or retained, or for which he has become liable or accountable, together with interest thereon after such rate as the Court thinks just, or to contribute to the assets of the company such sums of money as the Court thinks just by way of compensation for such misapplication, retainer, misfeasance, or breach of trust. 2. This section applies in the winding-up of any company whether the same is being wound up by or subject to the supervision of the Court or voluntarily, and whether the winding-up commenced before or after the passing of this Act. — E. § 215; N. S. W. a. (No. 40 of 1899) 162; V. f. (No. 1482) 135; T. c. (59 Vic. No. 19) 13; S. A. a. (No. 559) 179; Q. e. (27 Vic. No. 4) 166; W. A. a. (56 Vic. No. 8) 181. — The Court may entertain an application made by one of two liquidators appointed in the case of the voluntary winding-up of a company, for an inquiry into the conduct of his co-liquidator. — *In re Miranda Coal & Iron Co., Ltd.*, 11 L. R. (N. Z.) 640.

Destruction or falsification of books. 255. Every director, officer, or contributory of any company wound up under this Act, who destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company, with intent to defraud or deceive any person, is liable to two years' imprisonment with hard labour. — E. § 216; N. S. W. a. (No. 40 of 1899) 163; V. a. (No. 1074) 153; T. a. (33 Vic. No. 22) 201; S. A. a. (No. 557) 180, 181; Q. e. (27 Vic. No. 4) 167; W. A. a. (56 Vic. No. 8) 182, 183.

Prosecution of delinquent directors in the case of winding-up by Court, or under supervision. 256. Where, in the course of the winding-up of a company by the Court or subject to the supervision of the Court, it appears that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding-up, or of its own motion, direct the liquidator to prosecute any such person, and may order the costs and expenses of such prosecution to be paid out of the assets of the company. — E. § 217; N. S. W. a. (No. 40 of 1899) 164; V. a. (No. 1074) 154; T. a. (33 Vic. No. 22) 202; S. A. a. (No. 557) 182; Q. e. (27 Vic. No. 4) 168; W. A. a. (56 Vic. No. 8) 184.

In case of voluntary winding-up. 257. Where, in the course of the voluntary winding-up of a company, it appears to the liquidator that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator may, with the previous sanction of the Court, prosecute any such person, and all expenses properly incurred by the liquidator in such prosecution shall be payable out of the assets of the company in priority to all other liabilities. — E. § 217; N. S. W. a. (No. 40 of 1899) 164; V. a. (No. 1074) 155; T. a. (33 Vic. No. 22) 203; S. A. a. (No. 557) 182; Q. e. (27 Vic. No. 4) 169; W. A. a. (56 Vic. No. 8) 184.

Compromises and arrangements.

Power to make compromises with creditors. Power to make compromises with contributories and debtors. 258. The liquidator may, with the sanction of the Court where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company where the company is being wound up voluntarily: a) Pay any class of creditors in full, or make such compromise or other arrangement as he deems expedient with the creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable; or b) Compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions

in any way relating to or affecting the assets of the company or the winding-up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as are agreed on, with power to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities. — E. § 214; N. S. W. a. (No. 40 of 1899) 158, 161; V. a. (No. 1074) 144, 145; T. a. (33 Vic. No. 22) 186, 188; S. A. a. (No. 557) 171, 172; Q. e. (27 Vic. No. 4) 149, 150; W. A. a. (56 Vic. No. 8) 173, 174.

Power for liquidator to accept shares, etc., on sale of property to another company. Mode of determining price. Appointment of arbitrator when questions are to be determined by arbitration. 259. 1. Where a company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidator of the first-mentioned company may, with the sanction of a special resolution of the company by which he was appointed, conferring either a general authority on the liquidator or an authority in respect of any particular arrangement: a) Receive in compensation or part compensation for such transfer or sale, shares, policies, or other like interests in such other company for the purpose of distribution amongst the members of the company being wound up; or b) Enter into any other arrangement whereby the members of the company being wound up, in lieu of or in addition to receiving cash, shares, policies, or other like interests, may participate in the profits of or receive any other benefit from the purchasing company. 2. Any sale made or arrangement entered into by the liquidator under this section shall be binding on the members of the company being wound up, subject to this proviso: that if any member of the company being wound up who has not voted in favour of the special resolution passed by the company of which he is a member, at either of the meetings held for passing the same, expresses his dissent from such special resolution by notice in writing, addressed to the liquidator, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was confirmed, such dissentient member may require the liquidator to do one of the following things, as the liquidator may prefer, that is to say: c) Either abstain from carrying such resolution into effect; or d) Purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase-money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution. 3. No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed prior to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if within a year an order is made for winding up the company by or subject to the supervision of the Court such resolution shall not be of any validity unless sanctioned by the Court. 4. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement; but if the parties dispute about the same such dispute shall be settled by arbitration. 5. Any appointment required to be made on behalf of any company in respect of such arbitration may be made under the hand of the liquidator, and such arbitration shall be conducted in accordance with the provisions of *The Arbitration Act, 1908*. — E. § 192; N. S. W. a. (No. 40 of 1899) 261, 262; V. a. (No. 1074) 146, 149; T. a. (33 Vic. No. 22) 189, 190; S. A. a. (No. 557) 173, 176; Q. e. (27 Vic. No. 4) 151, 152; W. A. a. (56 Vic. No. 8) 175, 178.

Compromise with creditors of company. 260. 1. Where a compromise or arrangement between the company and its creditors or members or contributories, or any class thereof respectively, is proposed by a company about to be wound up voluntarily and embodied in an extraordinary resolution of the company, or by the liquidator of a company in course of being wound up, such compromise or arrangement shall, subject to such right of appeal as is hereinafter mentioned, be binding on all such creditors, members, or contributories, or class thereof respectively, and also on the company or the liquidator and contributories of the company, as the case may be, if a majority in number representing three-fourths in value of such creditors, members, or contributories, or class thereof respectively, present, either in person or by proxy, at a meeting of such creditors, members, or contributories, or class thereof respectively (summoned in the same manner as a meeting to consider an extraordinary resolution of the company), agree to such compromise or arrangement. 2. The Court, in addition to any of its other powers, may, on the application

in a summary way of any creditor or member, or of the liquidator, order that a meeting of such creditors or members or contributories, or class thereof respectively, be summoned in such manner as it directs. 3. Any creditor, member, or contributory of a company that has in the manner aforesaid entered into any such compromise or arrangement with its creditors, members, or contributories, or class thereof respectively, may, within twenty-one days from the date of the meeting at which such compromise or arrangement was agreed to, appeal to the Court against such compromise or arrangement, and the Court may if it thinks fit amend, vary, or confirm the same. 4. Any such compromise or arrangement as aforesaid shall remain binding notwithstanding any subsequent order of the Court staying proceedings in the winding-up, unless the Court in such order otherwise directs. — E. § 191; N. S. W. a. (No. 40 of 1899) 159, 160; V. a. (No. 1074) 122, 123, b. (No. 1269) 3—5; T. c. (59 Vic. No. 19) 18, 19; S. A. a. (No. 557) 139, 140; Q. f. (53 Vic. No. 18) 35; W. A. a. (56 Vic. No. 8) 143, 144.

Power of Court to make Rules.

Power of Judges of Supreme Court to make rules. 261. Any three or more of the Judges of the Supreme Court, of whom the Chief Justice shall be one, may, as often as circumstances require: a) Make rules of procedure for winding up a company by the Court, or by the District Court when such Court has jurisdiction under sections two hundred and seventeen or two hundred and eighteen hereof; b) Fix a scale of costs and charges to be paid to barristers and solicitors in all proceedings in a winding-up in the District Court. — N. S. W. a. (No. 40 of 1899) 265; V. a. (No. 1074) 157; T. a. (33 Vic. No. 22) 205; S. A. a. (No. 557) 188 (2, 3); Q. e. (27 Vic. No. 4) 171; W. A. a. (56 Vic. No. 8) 190 (2, 3).

Dissolution of companies.

Application for dissolution. Notice of dissolution. 262. 1. Where a limited company, the shares of which are fully paid up, has distributed the whole of its assets and ceased to carry on its operations, the chairman, manager, or any two directors or shareholders of such company may, on making an affidavit in the form numbered (1) in the fourth Schedule hereto, or to the like effect, and lodging the same, together with a fee of five guineas, with the Registrar, apply for a declaration of dissolution of such company. 2. The Registrar shall forthwith publish a copy of such affidavit, together with a notice in the form numbered (2) in the fourth Schedule hereto, in three consecutive issues of the *Gazette*, and in three consecutive issues of some newspaper circulating in the locality where the registered office is, or in which the last registered office of the company was. — Cp. notes to § 207, *supra*.

Notice of objection. 263. If notice of objection in writing, in the form numbered (3) in the fourth Schedule hereto, accompanied by a statutory declaration by the objector of the matter set forth or relied upon in such notice of objection, is lodged with the Registrar by any person declaring himself to be a shareholder or creditor of such company within sixty days of the first publication of the affidavit as directed in the last preceding section, the Registrar shall notify the same in the *Gazette* as aforesaid, and in some newspaper circulating as aforesaid, in the form numbered (4) in the fourth Schedule hereto, and in such case he shall not declare the dissolution of such company.

Declaration of dissolution. 264. 1. If no notice of objection as aforesaid is lodged, then the Registrar shall proceed to declare, by notice in the *Gazette* and in some newspaper circulating as aforesaid, in the form numbered (5) in the fourth Schedule hereto, that such company is dissolved, and from and after the gazetting of such notice such company shall be dissolved. 2. All books, papers, accounts, and documents of such company shall be deposited with the Registrar before such last-mentioned notice is published, and thereafter shall be kept by him in his office and be open to inspection by any person on payment of a fee of two shillings.

Dissolution not to bar prosecutions for fraud or misconduct, etc. Nor prevent creditor insisting on winding-up by Court. 265. 1. Nothing in this Act shall bar any civil or criminal proceeding against any chairman, director, manager, or other officer of any company for fraud or misconduct, or for any acts, matters, or things for which any such proceeding might have been taken before the company was declared to be dissolved. 2. A declaration of dissolution shall not prejudice the right of any creditor or shareholder of the company to institute proceedings for the purpose of having the same wound up by the Court.

*Striking companies off register.***Power of Registrar to strike defunct companies off the register in certain cases.**

266. 1. Where the Registrar has reasonable cause to believe that a company is not in operation he shall send to the company by post a letter inquiring whether the company is carrying on business or is in operation. 2. If within one month after sending the letter the Registrar does not receive any answer thereto he shall, within fourteen days after the expiration of such month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received by him, and that if an answer is not received to the second letter within one month from the date thereof a notice will be published in the *Gazette* with a view to striking the name of the company off the register. 3. If the Registrar either receives an answer from the company to the effect that it is not in operation, or does not within one month after sending the second letter receive any answer thereto, the Registrar may publish in the *Gazette*, and send to the company, a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company dissolved. 4. At the expiration of the time mentioned in the notice the Registrar may, unless cause to the contrary is previously shown by the company, strike the name of the company off the register, and shall publish a notice thereof in the *Gazette*, and thereupon the company shall be dissolved: Provided that the liability (if any) of every director, manager, and member of the company shall continue, and may be enforced as if the company had not been dissolved. 5. If any company or person feels aggrieved by the name of the company having been struck off the register in pursuance of this section, such company or person may apply to the Court; and the Court, if satisfied that it is just so to do, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may give such directions and make such provisions as it thinks just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off. 6. A letter or notice authorised or required for the purposes of this section to be sent to a company may be sent by post addressed to the company at its registered office; or, if no office has been registered, then addressed to the care of some director or officer of the company; or, if there is no director or officer of the company whose name and address are known to the Registrar, the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum. — E. § 242; V. f. (No. 1482) 157—162, j. (No. 1541) 1—9; S. A. u. (No. 557) 195; W. A. u. (56 Vic. No. 8) 197.

Where company is being wound up. 267. Where at any time after the commencement of proceedings for the winding-up of any company the Registrar has reasonable cause to believe that no liquidator is acting, or that the affairs of the company are fully wound up, and the reports required to be made by the liquidator are not made for a period of six months after notice by the Registrar demanding the same has been sent by post to the registered office of the company, or to the liquidator at his last known place of business, the provisions of the last preceding section shall apply in like manner as if the Registrar had not within one month after sending the second letter therein mentioned received any answer thereto. — See notes to § 266, *supra*.

Part VII. Application of Act to Companies registered under former Acts.

Joint Stock Companies Acts defined. 268. In this and the succeeding Parts of this Act the expression "Joint Stock Companies Acts" means *The Joint Stock Companies Act, 1860*, and its amendments.

Application of Act to companies formed under Joint Stock Companies Acts.

269. Subject as hereinafter mentioned, this Act, with the exception of Table A in the second Schedule, shall apply to companies formed and registered under the Joint Stock Companies Acts, in the same manner in the case of a limited company as if such company had been formed and registered under this Act as a company limited by shares, and, in the case of a company other than a limited company,

as if such company had been formed and registered as an unlimited company under this Act: Provided that where reference is made expressly or impliedly to the date of registration, such date shall be deemed to be the date at which such companies were respectively registered under the said Joint Stock Companies Acts: Provided also that the power of altering regulations by special resolution given by this Act shall, in the case of a company formed and registered under the said Joint Stock Companies Act, extend to altering any provisions contained in Table B annexed to *The Joint Stock Companies Act, 1860*, and shall also, in the case of an unlimited company formed and registered as aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that such regulations are contained in the memorandum of association. — E. § 245. See also the Reconstructed Companies Acts of Victoria: 57 Vic. No. 1356; Queensland: 58 Vic. No. 19.

Application of Act to companies registered under Joint Stock Companies Acts. 270. This Act applies to companies registered but not formed under the Joint Stock Companies Acts in the same manner as it is herein declared to apply to companies registered but not formed under this Act: Provided that where reference is made expressly or impliedly to the date of registration, such date shall be deemed to be the date at which such companies were respectively registered under the Joint Stock Companies Acts. — E. § 246.

Provisions of Part III. to apply. Mode of transferring shares. 271. 1. Subject to the provisions of this Part of this Act, all the powers conferred on companies by Part III. of this Act may be exercised by any company registered under the Joint Stock Companies Acts as if it had been registered under this Act. 2. Any company registered under the Joint Stock Companies Acts may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company directs. — E. § 248.

Part VIII. Companies authorised to register under this Act.

Rules as to registration of existing companies. 272. The following rules shall be observed with respect to the registration of companies under this Part of this Act, that is to say: a) No company having the liability of its members limited by Act of the Imperial Parliament or of the General Assembly, or by Royal charter or letters patent, and not being a joint-stock company as hereinafter defined, shall register under this Act in pursuance of this Part thereof. b) No company having the liability of its members limited by Act of the Imperial Parliament or of the General Assembly, or by Royal charter, or letters patent, shall register under this Act in pursuance of this Part thereof as an unlimited company, or as a company limited by guarantee; c) No company that is not a joint-stock company as hereinafter defined shall, in pursuance of this Part of this Act, register under this Act as a company limited by shares; d) No company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as are present personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose; e) Where a company, not having the liability of its members limited by Act of the Imperial Parliament or of the General Assembly, or by Royal charter, or by letters patent, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present personally or by proxy at such last-mentioned general meeting; f) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount; g) In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member. — E. § 249; N. S. W. a. (No. 40 of 1899), 67; V. a. (No. 1074)

159; T. a. (33 Vic. No. 22) 210; S. A. a. (No. 557) 80; Q. e. (27 Vic. No. 4) 173; W. A. a. (56 Vic. No. 8) 82.

Companies capable of being registered. 273. Subject to the foregoing rules, every existing company, including any company registered under the Joint Stock Companies Acts, consisting of seven or more members, and any company hereafter formed in pursuance of any Act of the Imperial Parliament or of the General Assembly (other than this Act), or by Royal charter or letters patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time register itself under this Act as an unlimited company, or as a company limited by shares, or a company limited by guarantee; and no such registration shall be invalid by reason that it has been effected with a view to the company being wound up. — E. § 249; N. S. W. a. (No. 40 of 1899) 168; V. a. (No. 1074) 160; T. a. (33 Vic. No. 22) 211; S. A. a. (No. 557) 81; Q. e. (27 Vic. No. 4) 174; W. A. a. (56 Vic. No. 8) 83.

Joint-stock company defined. 274. For the purposes of this Part of this Act, so far as the same relates to defined companies empowered to register as companies limited by shares, a joint-stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount, divided into shares also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital or the holders of such stock, and no other persons; and such company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares. — E. § 250; N. S. W. a. (No. 40 of 1899) 169; V. a. (No. 1074) 161; T. a. (33 Vic. No. 22) 212; S. A. a. (No. 557) 82; Q. e. (27 Vic. No. 4) 175; W. A. a. (56 Vic. No. 8) 84.

Registration by joint-stock companies. 275. Previous to the registration under this Part of this Act of any joint-stock company there shall be delivered to the Registrar the following documents, that is to say: a) A list showing the names, addresses, and occupations of all persons who, on a day named in such list, and not being more than six clear days before the day of registration, were members of the company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number; b) A copy of any Act of the Imperial Parliament or of the General Assembly, or of any Royal charter, letters patent, deed of settlement, or other instrument constituting or regulating the company; c) If the company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars, that is to say: 1. The nominal capital of the company and the number of shares into which it is divided; 2. The number of shares taken, and the amount paid on each share; 3. The name of the company, with the addition of the word "limited" as the last word thereof; and also 4. In the case of a company limited by guarantee, by a copy of the resolution declaring the amount of the guarantee. — E. § 252; N. S. W. a. (No. 40 of 1899) 171; V. a. (No. 1074) 163; T. a. (33 Vic. No. 22) 214; S. A. a. (No. 557) 83; Q. e. (27 Vic. No. 4) 177; W. A. a. (56 Vic. No. 8) 85.

Registration by other companies. 276. Prior to the registration under this Part of this Act of any company, not being a joint-stock company, there shall be delivered to the Registrar a list showing the names, addresses, and occupations of the directors of the company, and also a copy of any Act of the Imperial Parliament or of the General Assembly, or of any Royal charter, letters patent, deed of settlement, or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee. — E. § 253; N. S. W. a. (No. 40 of 1899) 172; V. a. (No. 1074) 164; T. a. (33 Vic. No. 22) 215; S. A. a. (No. 557) 84; Q. e. (27 Vic. No. 4) 178; W. A. a. (56 Vic. No. 8) 86.

The company may register amount of stock instead of shares. 277. Where a joint-stock company authorised to register under this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the company, and the names of the persons who are holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration. — E. § 252; N. S. W. a. (No. 40 of 1899) 173; V. a. (No. 1074) 165; T. a. (33 Vic. No. 22) 216; S. A. a. (No. 557) 85; Q. e. (27 Vic. No. 4) 179; W. A. a. (56 Vic. No. 8) 87.

Authentication of particulars required. 278. The lists of members and directors, and any other particulars relating to the company hereby required to be delivered to the Registrar, shall be verified by a statutory declaration of the directors of the company or any two of them, or of any two other principal officers of the company. — E. § 254; N. S. W. a. (No. 40 of 1899) 174; V. a. (No. 1074) 166; T. a. (33 Vic. No. 22) 217; S. A. a. (No. 557) 86; Q. e. (27 Vic. No. 4) 180; W. A. a. (56 Vic. No. 8) 88.

Evidence as to nature of company. 279. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or is not a joint-stock company as hereinbefore defined. — E. § 255; N. S. W. a. (No. 40 of 1899) 175; V. a. (No. 1074) 167; T. a. (33 Vic. No. 22) 218; S. A. a. (No. 557) 87; Q. e. (27 Vic. No. 4) 181; W. A. a. (56 Vic. No. 8) 89.

Exemption from payment of fees. 280. No fees shall be charged in respect of the registration under this Part of this Act of any company in cases where such company is not registered as a limited company, or where prior to its being registered as a limited company the liability of the shareholders was limited by some other Act of the Imperial Parliament or of the General Assembly, or by Royal charter, or by letters patent. — E. § 257; N. S. W. a. (No. 40 of 1899) 177; V. a. (No. 1074) 169; T. a. (33 Vic. No. 22) 220; S. A. a. (No. 557) 88; Q. e. (27 Vic. No. 4) 183; W. A. a. (56 Vic. No. 8) 90.

Addition to name. 281. Any company authorised by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited". — E. § 258; N. S. W. a. (No. 40 of 1899) 178; V. a. (No. 1074) 170; T. a. (33 Vic. No. 22) 221; S. A. a. (No. 557) 89; Q. e. (27 Vic. No. 4) 184; W. A. a. (56 Vic. No. 8) 91.

Certificate of incorporation. 282. Upon compliance with the requirements of this Part of this Act relating to registration, and on payment of such fees (if any) as are payable under Tables C and D in the second Schedule hereto, the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited; and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands. — E. § 259; N. S. W. a. (No. 40 of 1899) 179; V. a. (No. 1074) 171; T. a. (33 Vic. No. 22) 222; S. A. a. (No. 557) 90; Q. e. (27 Vic. No. 4) 185; W. A. a. (56 Vic. No. 8) 92.

Certificate to be evidence. 283. A certificate of incorporation given at any time to any company registered under this Part of this Act, or under the corresponding provisions of any former Act relating to companies, shall have the same effect in all respects as if it had been issued under section twenty-six hereof. — N. S. W. a. (No. 40 of 1899) 180; V. a. (No. 1074) 172; T. a. (33 Vic. No. 22) 223; S. A. a. (No. 557) 91; Q. e. (27 Vic. No. 4) 186; W. A. a. (56 Vic. No. 8) 93.

Transfer of assets to company. 284. All assets belonging to or vested in the company at the date of its registration under this Act shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein. — E. § 260; N. S. W. a. (No. 40 of 1899) 181; V. a. (No. 1074) 173; T. a. (33 Vic. No. 22) 224; S. A. a. (No. 557) 92; Q. e. (27 Vic. No. 4) 187; W. A. a. (56 Vic. No. 8) 94.

Registration not to affect existing rights or liabilities. 285. The registration under this Part of this Act of any company shall not affect or prejudice the liability of any such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into by, to, or with or on behalf of such company previously to such registration. — E. § 261; N. S. W. a. (No. 40 of 1899) 182; V. a. (No. 1074) 174; T. a. (33 Vic. No. 22) 225; S. A. a. (No. 557) 93; Q. e. (27 Vic. No. 4) 188; W. A. a. (56 Vic. No. 8) 95.

Continuation of existing actions. 286. All actions and other legal proceedings at the time of the registration of any company under this Part of this Act commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of such company upon any judgment, decree, or order obtained in any action or other proceeding so commenced as aforesaid; but, in the event of the assets of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding up the company. — E. § 262; N. S. W. a. (No. 40 of 1899) 183; V. a. (No. 1074) 175; T. a. (33 Vic. No. 22) 226; S. A. a. (No. 557) 94; Q. e. (27 Vic. No. 4) 189; W. A. a. (56 Vic. No. 8) 96.

Effect of registration. 287. Where a company is registered under this Part of this Act, all provisions contained in any Act of the Imperial Parliament or of the General Assembly, Royal charter, letters patent, deed of settlement, or other instrument constituting or regulating the company (including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee) shall have the same effect as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such company, and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following, that is to say: a) Table A in the second Schedule hereto shall not, unless adopted by special resolution, apply to any company registered under this Part of this Act; b) The provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered; c) No company shall have power to alter any provision contained in any Act of the Imperial Parliament or of the General Assembly, or in any letters patent relating to the company; d) In the event of the company being wound up, every person shall be a contributory in respect of the debts and liabilities of the company contracted prior to registration who is liable to pay or contribute to the payment of any such debt or liability, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company so far as the same relate to such debts or liabilities; e) Every such contributory shall be liable to contribute to the assets of the company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid; f) In the event of the death or bankruptcy of any such contributory as last aforesaid the provisions hereinbefore contained with respect to the representatives of deceased contributories, and the assignees of bankrupt contributories, shall apply; g) Any company registered under this Part of this Act or under the corresponding provisions of any Act heretofore in force for like purposes, may alter the provisions of its constitution as if it were a company originally formed under this Act: Provided that provisions which would appropriately be contained in its memorandum of association may only be altered under the provisions hereof relating to alterations of a memorandum of association. — E. § 263; N. S. W. a. (No. 40 of 1899) 184; V. a. (No. 1074) 176; T. a. (33 Vic. No. 22) 227; S. A. a. (No. 557) 95; Q. e. (27 Vic. No. 4) 190; W. A. a. (56 Vic. No. 8) 97.

Saving of powers under special Act, etc. 288. Nothing herein shall derogate from any power of altering its constitution or regulations that may be vested in any company registering under this Part of this Act, by virtue of any Act of the Imperial Parliament or of the General Assembly, Royal charter, letters patent, deed of settlement, or other instrument constituting or regulating the company. — See notes to § 287, *supra*.

Stay of proceedings on winding up. 289. The Court may at any time after the presentation of a petition for winding up a company registered under this Part of this Act, and before making an order for winding up the company, upon the application by motion of the company or of any creditor or contributory of the company, restrain further proceedings in any action or other proceeding against any contributory of the company, as well as against the company, upon such terms as the Court thinks fit. — E. § 265; V. a. (No. 1074) 177; T. a. (33 Vic. No. 22) 228; Q. e. (27 Vic. No. 4) 191; W. A. a. (56 Vic. No. 8) 98.

After order for winding-up no legal proceedings to be taken without leave of Court. 290. Where an order has been made for winding up a company registered under this Part of this Act, no action or other proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt due by the company except with the leave of the Court and subject to such terms as the Court imposes. — E. §§ 266, 271; N. S. W. a. (No. 40 of 1899) 94; V. a. (No. 1074) 178, 186; T. a. (33 Vic. No. 22) 120, 229, c. (59 Vic. No. 19) 22; S. A. a. (No. 557) 189, 192; Q. e. (27 Vic. No. 4) 192, 196; W. A. a. (56 Vic. No. 8) 191, 194.

Re-registration of companies.

Registration anew of company. 291. Subject as mentioned in this Act, any company registered as an unlimited company may register under this Act as a limited company, or any company already registered as a limited company may

re-register under the provisions of this Act. — E. § 57; and cp. § 273, *supra*, and notes thereto.

Effect of such registration. 292. The registration in pursuance of this Act of an unlimited company as a limited company shall not affect or prejudice any debts, liabilities, contracts, or obligations incurred or entered into by, to, with, or on behalf of such company prior to registration; and such debts, liabilities, contracts, and obligations may be enforced in the manner provided by this Part of this Act in the case of a company registering in pursuance thereof. — See note to § 291, *supra*.

Reserve capital of company, how provided. 293. An unlimited company may, in accordance with the resolution passed by the members when assenting to registration as a limited company under this Act, and for the purpose of such registration or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares: Provided that no part of such increased capital shall be called up except in the event of and for the purposes of the company being wound up. — E. §§ 58, 59; and see note to § 291, *supra*.

Uncalled capital in unlimited company. 294. Where no such increase of nominal capital is resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be called up except in the event of and for the purposes of the company being wound up. — See notes to § 291, *supra*.

Closing of former registry in case of re-registration. 295. On the registration, in pursuance of section two hundred and ninety-one hereof, of a company that has already been registered, the Registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration of such company shall take place in the same manner and have the same effect as if it were the first registration of that company under this Act. — E. § 57; and see note to § 291, *supra*.

Privileges of Act available, notwithstanding constitution of company. 296. A company authorised to register under the provisions of this Act relating to re-registration may register thereunder and avail itself of the privileges conferred by this Act, notwithstanding any provisions contained in any Act of the Imperial Parliament or of the General Assembly, Royal charter, letters patent, deed of settlement, regulations, or other instrument constituting or regulating the company. — E. § 263 (III); and see note to § 291, *supra*.

Part IX. Companies incorporated outside New Zealand.

Foreign company defined. 297. In this Part of this Act, if not inconsistent with the context: "Foreign company" means any partnership, association, company, or corporation incorporated outside New Zealand. — N. S. W. c. (No. 22 of 1906) 2; V. f. (No. 1482) 70 (1); T. f. (59 Vic. No. 17) 3; S. A. a. (No. 557) 3, b. (No. 576) 3; Q. 1. (59 Vic. No. 2) 2; W. A. a. (56 Vic. No. 8) 3.

Carrying on business.

Company may appoint attorney within New Zealand. 298. 1. A foreign company may from time to time, by an instrument in writing under its common seal, or executed in such manner as to be binding on the company, empower any person, either generally or in respect of any specified matters, as its attorney, to sue and be sued, or otherwise appear or be impleaded in any Court in any civil or criminal proceeding, or before any arbitrator or person having by law or consent of parties authority to take evidence, and generally on behalf of such company to do all acts and to execute any deeds or instruments within New Zealand. 2. Where more than one person is appointed: a) The appointment may be joint, or joint and several; and b) The powers and authorities conferred on such persons may be in respect of the same or separate matters. — E. § 274; N. S. W. c. (No. 22 of 1906) 7; V. f. (No. 1482) 70 (1); T. f. (59 Vic. No. 17) 5 (1); S. A. a. (No. 557) 196; Q. 1. (59 Vic. No. 2) 3, 7; W. A. a. (56 Vic. No. 8) 198, f. (2 Edw. 7, No. 19) 2. — A foreign company carrying on business in New Zealand is deemed to be resident in the Colony. — *Guy v. Ferguson Syndicate Co.*, 10 L. R. (N. Z.) 405; *McCaul v. New Zealand Loan, etc., Co.*, L. R. 1 S. C. (N. Z.) 297. A contract entered into in New Zealand by a foreign company is not void by reason of the company, at the time of the contract being entered into, not having an attorney in the Colony appointed by instrument in writing. — *Picturesque Atlas Co., Ltd., v. Harbottle*, 10 L. R. (N. Z.)

348. Under the *Companies Seals Act, 1864* (27 Vic. c. 19) the affixing in New Zealand of the official seal for use in the Colony, by duly appointed agents of a company registered in the United Kingdom, is equivalent to the affixing of the common seal by the board of directors. — *In re The British and New Zealand Mortgage & Agency Co., Ltd.*, L. R. 4 S. C. (N. Z.) 228.

Acts of attorney to be binding on company. 299. Every act done or purporting to be done, and every deed or instrument executed or signed by such attorney on behalf of the foreign company by whom he is appointed, shall bind the company in the same way and to the same extent, and have the same force and effect in every respect, as if such act had been done by the company, and as if such deed or instrument had been duly sealed with the common seal of the company, or otherwise executed or signed in such manner as to bind the company. — N. S. W. c. (No. 22 of 1906) 7 (1); V. f. (No. 1482) 70 (1); T. f. (59 Vic. No. 17) 6; S. A. a. (No. 557) 197; Q. l. (59 Vic. No. 2) 3—7; W. A. a. (56 Vic. No. 8) 199.

Power of attorney appointing agent to be deposited with Registrar of Court. 300.

1. Before any foreign company commences business in New Zealand the attorney so appointed shall deposit in the office of the Court nearest to the place where such company proposes to carry on business a certified copy of the original power of attorney under which he claims to represent such company, together with a certified copy of the certificate or other evidence of the incorporation of such company as hereinafter mentioned. 2. It shall be the duty of the Registrar of the Court to ascertain that such copies so deposited are true copies of the original instruments; and such copies shall be open to the inspection of the public on payment of a fee of one shilling. — E. § 274; N. S. W. c. (No. 22 of 1906) 7 (1); V. f. (No. 1482) 70 (1); T. f. (59 Vic. No. 17) 5, 13, g. (62 Vic. No. 26) 5, 7; S. A. a. (No. 557) 196 (4), 202; Q. l. (59 Vic. No. 2) 4; W. A. a. (56 Vic. No. 8) 198 (4), 204. — A contract entered into in New Zealand by a foreign company is not void by reason of the company, at the time the contract was made, not having deposited a power of attorney appointing an agent. — *Picturesque Atlas Co., Ltd. v. Harbottle*, 10 L. R. (N. Z.) 348.

Where foreign company carries on business in several places copies to be deposited in each. 301. If the foreign company proposes to carry on business in different places in New Zealand, or, after commencing business in one part thereof, extends its operations to other parts of New Zealand, the attorney shall deposit like copies of the power of attorney and certificate or other evidence of incorporation at the principal office of the Court in the judicial district within which the company so proposes to carry on or desires to extend its business; and all the provisions of the last preceding section shall apply accordingly. — See notes to § 300, *supra*.

Foreign company to have office in the colony where notices, etc., may be served. 302.

Every foreign company shall have an office or place of business in New Zealand where legal process of any kind may be served upon it, and notices of any kind may be addressed or delivered; and for the purposes of this Act the following provisions shall apply: a) Before any foreign company commences or carries on business in New Zealand the attorney of every such company shall cause a notice to be inserted in at least three consecutive issues of the *Gazette*, and of some newspaper circulating in the place where it is proposed to commence or carry on business, stating the situation and locality of such office or place of business; b) If any change is made in the situation or locality of such office or place of business the attorney shall cause a like notice of such change to be given in the manner hereinbefore provided; c) The preceding provisions of this section shall extend and apply to every place where the foreign company carries on business at any time in New Zealand; d) Service of legal process or the delivery of any notice at any such office or place of business shall for all purposes be deemed good service on the company; but nothing herein shall be deemed to control or affect any statute or rule now or hereafter in force regulating the service of legal process upon any person or corporate body according to the practice of the Court whence such process issues; e) Every attorney of a foreign company who fails to comply with any of the foregoing provisions is liable to a fine of five pounds for every day during which the business of such company is carried on contrary to this Act. — E. § 274; N. S. W. c. (No. 22 of 1906) 7 (1), 12, 13; V. f. (No. 1482) 70 (1), 71, 73, 74; T. f. (59 Vic. No. 17) 5, 9, 12, 14, g. (62 Vic. No. 26) 16, 17; S. A. a. (No. 557) 196 (5), 200, 201, 203; Q. l. (59 Vic. No. 2) 8—9; W. A. a. (56 Vic. No. 8) 198 (5), 202, 203, 205. — A contract entered into in New Zealand by a foreign company is not void by reason of the company, at the time the contract was made, not having an office or place of business in the Colony for service of legal process, or by reason of its attorney not having publicly notified the location of such office or place of business. — *Picturesque Atlas Co., Ltd. v. Harbottle*, 10 L. R. (N. Z.) 348.

Declaration as to incorporation of company to be evidence. Declaration where no seal necessary. 303. 1. A declaration indorsed upon or annexed to any instrument appointing, or purporting to appoint, an attorney as hereinbefore mentioned, made or purporting to be made by one of the directors, or by the general manager of the foreign company so appointing an attorney, before a mayor, provost, notary public, British consul or vice-consul, or other person lawfully authorised to take such declaration, to the effect that: a) The company is incorporated under the style mentioned in the instrument, in accordance with the law of the country where it is so incorporated [*Naming such country*]; and b) The seal affixed thereto is the common seal of the said company; and c) The seal has been affixed, and the instrument executed, and the powers and authorities purporting to be conferred upon the attorney are authorised to be conferred under the constitution of the company, or in pursuance of the Act or instrument under which the company is incorporated, or by the regulations for the time being thereof; and d) The declarant is a director or general manager of the company, shall be conclusive evidence of the facts set forth therein. 2. In cases where by the law of the country where the foreign company is incorporated no seal is necessary, or the company has no seal, the existence of such law or the fact that the company has no seal may be stated in such declaration, and the provisions of this section may be modified and shall take effect accordingly. — N. S. W. c. (No. 22 of 1906) 11, 13; V. f. (No. 1482) 72; T. f. (59 Vic. No. 17) 15 (1), g. (62 Vic. No. 26) 10, 15; S. A. a. (No. 557) 204; Q. l. (59 Vic. No. 2) 4, 6; W. A. a. (56 Vic. No. 8) 206, b. (60 Vic. No. 2) 4.

Power of attorney receivable in evidence. 304. Any power of attorney in respect of which any such declaration has been made as hereinbefore required, and any certified copy of any such power of attorney deposited under the provisions of this Act, shall for all purposes be receivable in evidence without further proof of the sealing, signature, or other execution thereof. — N. S. W. c. (No. 22 of 1906) 11, 13; V. f. (No. 1482) 72; T. f. (59 Vic. No. 17) 15 (2), g. (52 Vic. No. 26) 11; S. A. a. (No. 557) 197; W. A. a. (56 Vic. No. 8) 199.

Power of attorney to continue in force until notice of revocation received. 305. Every power of attorney purporting to be granted by any foreign company as hereinbefore mentioned shall, as between the company, its successors and assigns, on the one hand, and the persons dealing with the attorney of such company and all parties claiming through or under such persons, on the other hand, continue in force (notwithstanding that such power has been revoked, or the company wound up or dissolved) until the attorney of the company, or all and every the attorneys, if more than one, to whom such power is given have received notice or information of such revocation, winding-up, or dissolution. — E. § 274; N. S. W. c. (No. 22 of 1906) 11, 13; V. f. (No. 1482) 72, 73; T. f. (59 Vic. No. 17) 7; S. A. a. (No. 557) 198; W. A. a. (56 Vic. No. 8) 200.

Declaration of attorneys to be sufficient proof of non-revocation. 306. 1. A statutory declaration by the attorney of any foreign company that he has not received any notice or information of the revocation of the power of attorney, or of the winding-up or dissolution of the company, shall be taken to be conclusive proof that no such revocation, winding-up, or dissolution has taken place. 2. Where there are more attorneys than one, such declaration may be made by any one of the attorneys. — E. § 274; N. S. W. c. (No. 22 of 1906) 11, 13; V. f. (No. 1482) 72, 73; T. f. (59 Vic. No. 17) 17; S. A. a. (No. 557) 206; W. A. a. (56 Vic. No. 8) 209.

Foreign company to give due notice of intention to cease carrying on business. 307. 1. Before any foreign company voluntarily ceases to carry on business in any part of New Zealand at least three months' notice shall be given by its attorney of its intention so to do, and such notice shall be published in at least three consecutive issues of the *Gazette* and of some newspaper circulating at each place in New Zealand where the company carries on business. 2. For a period of three months after the first gazettement of such notice legal process and other documents may be served on the attorney of the company under this Act, or, if there is no such attorney, then by leaving the same at any office or place of business where the company carried on business prior to the giving of the notice aforesaid, and such service shall be as effectual as if the notice aforesaid had not been given. — N. S. W. c. (No. 22 of 1906) 11, 13; V. f. (No. 1482) 72, 73; T. f. (59 Vic. No. 17) 16; S. A. a. (No. 557) 205; Q. l. (59 Vic. No. 2) 9; W. A. a. (56 Vic. No. 8) 208.

Evidence of incorporation of company. 308. 1. A certificate of incorporation given under the hand of any officer who may by the law of the country in which such

foreign company purports to be incorporated be authorised to grant such certificate, duly verified by declaration made by one of the directors or the manager of such company before a mayor, provost, notary public, British consul or vice-consul, or other person lawfully authorised to take such declaration, shall be conclusive evidence that such company has been duly incorporated. 2. The date of incorporation mentioned in such certificate or in such declaration shall be deemed to be the date at which such company was incorporated; or if no such date be mentioned, then the date of such certificate shall be deemed to be the date at which such company was incorporated. 3. Where no certificate of incorporation has been given, an exemplification of any Royal charter, or a copy of the Act or instrument of incorporation, or any document of a similar effect to a certificate of incorporation under which the foreign company purports to be incorporated, duly verified as hereinbefore required, shall be sufficient evidence for the purposes of this section. 4. Nothing herein shall be construed as limiting the power of any Court to receive any evidence of the incorporation of a company that it deems sufficient. — N. S. W. c. (No. 22 of 1906) 11; V. f. (No. 1482) 72; T. f. (59 Vic. No. 17) 18; S. A. a. (No. 557) 207; Q. l. (59 Vic. No. 2) 6, 10; W. A. a. (56 Vic. No. 8) 210. — A certificate of incorporation of a company registered under the English Companies Acts, purporting to be under the hand of the Registrar of Joint Stock Companies in England, is sufficient evidence of incorporation, without proof of the signature of the Registrar or the official character of the person whose signature is affixed to the certificate. — *Shaw, Savill, & Albion Co., Ltd. v. Timaru Harbour Board*, 6 L. R. (N. Z.) 456. The fact that a company carries on business under a certain name is evidence of its incorporation under that name. — *R. v. Waldmann*, L. R. 1 C. A. (N. Z.) 141.

Act not to authorise issue of bank or promissory notes. 309. Nothing in this Part of this Act shall be construed to authorise any foreign company incorporated as aforesaid to issue notes or promissory notes payable on demand in New Zealand. — S. A. a. (No. 557) 208; W. A. a. (56 Vic. No. 8) 211.

Winding-up.

May be wound up by the Court. 310. 1. Any foreign company may be wound up under this Act: a) Where the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs; b) Where the company is unable to pay its debts; c) Where the Court is of opinion that it is just and equitable that the company should be wound up: Provided that no company shall be wound up under this Act voluntarily, or subject to the supervision of the Court. 2. All the provisions of this Act relating to winding up apply to the winding-up of a foreign company. — T. f. (59 Vic. No. 17) 21, g. (62 Vic. No. 26) 20, 21. — It seems that under this section the Court in New Zealand has jurisdiction to wind up a foreign company carrying on business in New Zealand. The pendency of a foreign liquidation does not affect the jurisdiction of the Court to make a winding-up order in respect of the company under such liquidation, although the Court will, as a matter of international comity, have regard to the order of the foreign court. — *Morison, Law of Limited Liability Companies in New Zealand*, p. 285. By comity the New Zealand court will recognize the winding-up order of the court of the country in which the company is incorporated. Where, therefore, the leave of the foreign court to bring suit in the Colony against the company in process of being wound up is not obtained, the New Zealand courts will on motion stay the proceedings. — *Bank of Otago v. Commercial Bank of New Zealand, Mac.* (N. Z.) 233. As to status of a receiver appointed in England in a suit by the holders of debentures, where another receiver of the same company has been appointed by the Court of New Zealand, see *In re The New Zealand Midland Railway Co., Ltd.*, 19 L. R. (N. Z.) 227.

When company unable to pay its debts. 311. A foreign company shall, for the purposes of this Act, be deemed to be unable to pay its debts: a) If a creditor to whom the company is indebted, by assignment or otherwise, in a sum exceeding fifty pounds has served on the company, by leaving the same at the principal place of business of the company, or by delivering the same to the manager or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court approves or directs, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of twenty-one days after the service of such demand failed to pay such sum, or to secure or compound for the same to the satisfaction of the creditor; or b) If an action or other proceeding has been commenced against any member of the company for any debt or demand due or claimed to be due from the company or from him in his character of member of the company, and notice in writing of the commencement of such proceeding has been served upon the company in the manner aforesaid, and the

company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such proceeding, and against all costs, damages, and expenses to be incurred by him by reason thereof; or c) If execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor in any proceeding commenced by such creditor against the company, or any member thereof as such member, or against any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied; or d) If it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

Principal office to be deemed to be registered office. 312. Where proceedings are taken for winding up a foreign company the principal place of business in New Zealand of such company shall for all purposes of this Part of this Act be deemed to be the registered office of the company.

Powers of liquidator of British company. 313. The liquidator of a foreign company now or hereafter being wound up may exercise all or any of the powers conferred on a company by this Part of this Act.

Powers under Companies' Seals Act. 314. A liquidator of a company incorporated in the United Kingdom may exercise all or any of the powers conferred on a company by the Imperial Act known as *The Companies Seals Act, 1864*, and such liquidator shall be deemed to have had, from the passing thereof, authority to exercise all or any of such powers.

Declaration of liquidator conclusive as to certain facts. 315. Where a foreign company is being wound up a declaration made by the liquidator before a mayor, provost, notary public, British consul or vice-consul, or other person lawfully authorised to take such declaration, indorsed upon or annexed to any instrument appointing or purporting to appoint an attorney for the purposes of the winding-up, to the effect that: a) The company is incorporated in Great Britain or elsewhere under the style mentioned in the instrument; b) The seal affixed thereto is the common seal of the company; c) The seal has been so affixed and the instrument executed; d) The powers and authorities purporting to be conferred by the said instrument upon the person therein mentioned have been authorised; and e) The person making the declaration is a liquidator of the company, shall be final and conclusive evidence of the facts set forth therein.

Protection of persons dealing with liquidator. 316. No person dealing *bonâ fide* with the liquidator of a foreign company now or hereafter being wound up, whether in or out of New Zealand, shall be affected by any invalidity or irregularity in or about the winding-up of such company, or the appointment of such liquidator.

Who to be deemed contributories in the event of foreign company being wound up. 317. 1. In the event of a foreign company being wound up every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company. 2. Every such contributory shall be liable in the course of the winding-up to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid. 3. In the event of the death or bankruptcy of any contributory the provisions hereinbefore contained with respect to the representatives of a deceased contributory, and to the assignee of a bankrupt contributory, shall apply.

Stay of proceedings where petition presented for winding-up. 318. The Court may, at any time after the presentation of a petition for winding up a foreign company, and before making an order for winding up the company, upon the application of the company or of any creditor or contributor of the company, restrain further proceedings in any action or other proceeding against any contributory of the company, or against the company, upon such terms as the Court thinks fit.

After order for winding up no proceedings to be taken without leave of Court. 319. Where an order is made for winding up a foreign company no action or other proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt due by the company except with the leave of the Court and subject to such terms as the Court imposes.

Property of company may be vested in Official Liquidator, etc. 320. 1. If any foreign company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the order made for winding up such company or by any subsequent order, direct that all property, including all interests, claims, and rights in, to, and out of property, and including things in action belonging to or to be vested in the company, or belonging to or vested in any person or persons upon trust for or on behalf of the company, or any part of such property, shall vest in the Official Liquidator, and thereupon the same or such part thereof as is specified in the order shall vest accordingly. 2. The Official Liquidator may in his official name, or in such name or names and after giving such indemnity as the Court directs, bring or defend any action or other proceeding relating to any property vested in him, or necessary to be brought or defended for the purposes of effectually winding up the foreign company and recovering the property thereof.

Provisions in this Part of Act cumulative. Application of other Parts of Act to unregistered companies. 321. 1. The provisions of this Part of this Act shall be deemed to be in addition to and not in restriction of any provisions hereinbefore contained with respect to the winding-up of companies by the Court. 2. Where a foreign company is being wound up under this Act the Court or Official Liquidator may exercise any powers or do any act that might be exercised or done by it or him in winding up companies formed under this Act; but a foreign company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part of this Act.

Part X. Miscellaneous Provisions.

Provisions as to associations formed for purposes not of gain. Prohibition against certain companies holding land. 322. 1. Where any association desires to be registered under this Act as a limited company, if it is proved to the Governor in Council that such association is formed for the purpose of promoting art, science, religion, charity, or any other useful object, and that it intends to apply its profits, if any, or other income in promoting such objects, and to prohibit the payment of any dividend or bonus to its members, the Governor may, by Order in Council, direct such association to be registered with limited liability without the addition of the word "limited" to its name. 2. Such associations may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act conferred or imposed on limited companies: Provided that none of the provisions of this Act requiring a limited company to use the word "limited" as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the Registrar, shall apply to an association so registered. 3. Such Order in Council may be granted upon such conditions and subject to such regulations as are prescribed therein; and such conditions and regulations shall be binding on the association, and may, at the option of the Governor in Council, be inserted in the memorandum of association and articles of association, or in either of such documents. 4. No such company shall, without the sanction of the Governor in Council, hold more than two acres of land: Provided that the Governor in Council may empower any such company to hold lands in such quantity and subject to such conditions as he thinks fit. — E. §§ 19, 20; N. S. W. a. (No. 40 of 1899) 52, 53; V. a. (No. 1074) 181, 182; T. c. (59 Vic. No. 19) 9; Q. f. (53 Vic. No. 18) 26; Q. e. (27 Vic. No. 4) 20. — Cp. E. 7 Edw. 7, c. 50, § 42.

Forms in third Schedule to be used. 323. The forms set forth in the third Schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer.

Governor in Council may alter forms. 324. The Governor in Council may from time to time make such alterations in the tables and forms contained in the Schedules hereto, or make such additions to the said forms, as he deems requisite, so long as he does not increase the amount of fees payable to the Registrar mentioned in the second Schedule. — E. § 118; N. S. W. a. (No. 40 of 1899) 74; V. a. (No. 1074) 70; T. a. (33 Vic. No. 22) 76; S. A. a. (No. 557) 63; Q. e. (27 Vic. No. 4) 70; W. A. a. (56 Vic. No. 8) 65.

Alterations to be gazetted. 325. Any such table or form, when altered, shall be gazetted, and thereupon it shall have the same force as if it were included in

the appropriate Schedule hereto; but no alteration made by the Governor in Council in Table A in the second Schedule hereto shall affect any company registered prior to the date of such alteration, or repeal as respects such company any portion of such table. — See notes to § 324, *supra*.

Part XI. Special as to Fire and Marine Insurance Companies.

[§§ 326—339 relate to insurance companies.]

Part XII. Mining Companies.

[§§ 340—371 relate to mining companies.]

Schedules.

First Schedule.

Enactments consolidated.

- 1889, No. 14. The Fire and Marine Insurance Companies Act, 1889.
- 1903, No. 53. The Companies Act, 1903.
- 1904, No. 39. The Mining Companies Act, 1904.
- 1906, No. 58. The Statute Law Amendment Act, 1906: Section 4, also section 11, so far as applicable.

Second Schedule.

Table A. Regulations for Management of a Company Limited by Shares.

Shares.

1. The shares shall be under the control of the directors, who may allot or otherwise dispose of the same to such persons on such terms and conditions and at such times as the directors think fit.
2. Upon any offer of shares to the public for subscription the company may pay a commission of not more than 5 per cent. on the nominal amount of the shares, in pursuance of the powers in that behalf expressly conferred by *The Companies Act, 1908*.
3. If by the conditions of allotment of any share the whole or part of the amount thereof shall be payable by instalments, every such instalment shall when due be paid to the company by the person who for the time being shall be the registered holder of the share.
4. The joint holders of a share shall be severally as well as jointly liable for the payment of all instalments and calls due in respect of such share.
5. The company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not be bound to recognise any partial, equitable, or other claim to, or interest, or any interest in the nature of a trust or otherwise in any shares or stock, or any other right in respect of any shares or stock save as herein provided.

Certificates.

6. The certificates of title to shares or stock shall be issued under the seal of the company, and signed by two directors and countersigned by the secretary or some other person appointed by the directors.
7. Every member shall be entitled, free of charge, to one certificate for all the shares or stock registered in his name, or to several certificates, each for a part of such shares or stock. Every certificate of shares shall specify the number and denoting numbers of the shares in respect of which it is issued, and the amount paid up thereon.
8. If any certificate be worn out or defaced, then upon production thereof to the directors they may order the same to be cancelled, and may issue a new certificate in lieu thereof; and if any certificate be lost or destroyed, then upon proof thereof to the satisfaction of the directors, and upon such indemnity as the directors deem adequate being given, a new certificate in lieu thereof shall be given to the person entitled to such lost or destroyed certificate.
9. The sum of one shilling or such smaller sum (if any) as the directors may determine shall be paid to the company for every certificate issued under Regulation 8.
10. The certificate of shares or stock registered in the names of two or more persons may be delivered to the person first named on the register, subject to any special arrangement to the contrary being made with the consent of the directors, but the directors may, before delivering such certificate of shares or stock, require the receipt for the same of all persons registered as entitled to such shares or stock.

Calls.

11. The directors may from time to time make such calls as they think fit upon the members in respect of all moneys unpaid on the shares held by them respectively and not by the conditions of allotment thereof made payable at fixed times, and each member shall pay the amount of every call so made on him to the persons and at the times and places appointed by the directors. A call may be made payable by instalments.

12. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed.

13. Fourteen days' notice of any call shall be given specifying the time and place of payment and to whom such call shall be paid.

14. If the sum payable in respect of any call or instalment be not paid on or before the day appointed for payment thereof, the holder for the time being of the share in respect of which the call shall have been made or the instalment shall be due shall pay interest for the same at the rate of six pounds per centum per annum from the day appointed for the payment thereof to the time of the actual payment.

15. On the trial or hearing of any action for the recovery of any money due for any call it shall be sufficient to prove that the name of the member sued is entered in the register of members of the company as the holder or one of the holders of the shares in respect of which such debt accrued; that the resolution making the call is duly recorded in the minute-book, and that notice of such call was duly given to the member sued in pursuance of these regulations; and it shall not be necessary to prove the appointment or qualification of the directors who made such call, nor any other matter whatsoever; and the proof of the matters aforesaid shall be conclusive evidence of the debt.

16. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the money due upon the shares held by him beyond the sums actually called for; and upon the money so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may, if the directors think fit, pay interest at such rate as the member paying such sum in advance and the directors agree upon; but no shareholder shall be entitled as of right to any interest on any money so paid in advance, and the directors may decline to pay any interest.

Forfeiture and lien.

17. If any member fail to pay any call or instalment on or before the day appointed for the payment of the same the directors may at any time thereafter during such time as the call or instalment remains unpaid serve a notice on such member requiring him to pay the same, together with any interest that may have accrued and all expenses that may have been incurred by the company by reason of such non-payment.

18. The notice shall name a day (not being less than fourteen days from the date of the notice) and a place or places on and at which such call or instalment and such interest and expenses as aforesaid are to be paid. The notice shall also state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

19. If the requisitions of any such notice as aforesaid are not complied with, any shares in respect of which such notice has been given may at any time thereafter before payment of all calls or instalments, interest, and expenses due in respect thereof be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

20. When any share shall have been so forfeited, notice of the resolution shall be given to the member in whose name it stood immediately prior to the forfeiture; and an entry of the forfeiture, with the date thereof, shall forthwith be made in the register.

21. Any share so forfeited shall be deemed to be the property of the company, and the directors may sell, reallocate, and otherwise dispose of the same in such manner as they think fit.

22. The directors may by resolution, at any time before any share so forfeited shall have been sold, reallocated, or otherwise disposed of, annul the forfeiture thereof upon such conditions as they think fit.

23. Any member whose shares have been forfeited shall notwithstanding be liable to pay, and shall forthwith pay, to the company all calls, instalments, interest, and expenses owing upon or in respect of such shares at the time of forfeiture, together with interest thereon, from the time of forfeiture until payment, at six per centum per annum; and the directors may enforce the payment thereof if they think fit.

24. The company shall have a first and paramount lien upon all the shares registered in the name of each member (whether solely or jointly with others) for his debts, liabilities, and engagements solely or jointly with any other person to or with the company, whether the period for the repayment, fulfilment, or discharge thereof shall have actually arrived or not; and such lien shall extend to all dividends from time to time declared in respect of such shares. Unless otherwise agreed, the registration of a transfer of shares shall operate as a waiver of the company's lien, if any, on such shares.

25. For the purpose of enforcing such lien the directors may sell the shares subject thereto in such manner as they think fit; but no sale shall be made until notice in writing of the intention to sell shall have been served on such member, his executors or administrators, and default shall have been made by him or them in the payment, fulfilment, or discharge of such debts, liabilities, or engagements for seven days after such notice.

26. The net proceeds of any such sale shall be applied in or towards satisfaction of such debts, liabilities, or engagements, and the residue, if any, paid to such member, his executors, administrators, successors, or assigns.

27. A certificate under the hands of two of the directors and countersigned by the secretary that the power of sale hereinbefore mentioned has arisen and is exercisable by the company under these articles shall be conclusive evidence thereof.

28. Upon any sale after forfeiture, or for enforcing a lien in purported exercise of the powers hereinbefore given, the directors may cause the purchaser's name to be entered in the register in respect of the shares sold, and the purchaser shall not be bound to see to the regularity of the proceedings or to the application of the purchase-money; and after his name has been entered in the register in respect of such shares the validity of the sale shall not be impeached by any person, and the remedy of any person aggrieved by the sale shall be in damages only and against the company exclusively.

Transfer of shares.

29. The instrument of transfer of any share shall be signed both by the transferor and transferee, and the transferor shall be deemed the holder of such share until the name of the transferee is entered in the register in respect thereof.

30. The instrument of transfer of any share shall be in writing in the usual form, or in the following form or as near thereto as circumstances will admit:

I, _____, of _____, in consideration of the sum of _____ pounds paid to me by _____, of _____ (hereinafter called "the said transferee"), do hereby transfer to the said transferee _____ shares numbered _____ in the _____ Company (Limited), to hold unto the said transferee, his executors, administrators, and assigns, subject to the several conditions on which I held the same immediately before the execution hereof; and I, the said transferee, do hereby agree to take the said shares, subject to the conditions aforesaid.

As witness our hands the _____ day of _____.

Witness to the signature of, &c.

31. No transfer shall be made to an infant or person of unsound mind.

32. Every instrument of transfer shall be left at the office for registration, accompanied by the certificate of the shares to be transferred and such other evidence as the company may require to prove the title of the transferor or his right to transfer the shares.

33. All instruments of transfer which shall be registered shall be retained by the company, but any instrument of transfer which the directors may decline to register shall be returned to the person depositing the same.

34. A fee not exceeding two shillings and sixpence may be charged for each transfer, and shall, if required by the directors, be paid before the registration thereof.

35. The transfer-books and register of members may be closed during such time as the directors think fit, not exceeding in the whole thirty days in each year.

36. The directors may refuse to register any transfer of a share or shares: a) Where the company has a lien on the share or shares; b) Where it is not proved to their satisfaction that the proposed transferee is a responsible person.

Transmission of shares.

37. The executors or administrators of a deceased member (not being one of several joint holders) shall be the only persons recognised by the company as having any title to the shares registered in the name of such member, and in case of the death of any one or more of the joint holders of any registered shares the survivor or survivors shall be the only persons recognised by the company as having any title to or interest in such shares.

38. Any committee of a lunatic member or any person becoming entitled to shares in consequence of the death or bankruptcy of any member, upon producing such evidence that he sustains the character in respect of which he proposes to act under this article or of his title as the directors think sufficient, may, with the consent of the directors, be registered as a member in respect of such shares, or may transfer such shares.

Conversion of shares into stock.

39. The company in general meeting may convert any paid-up shares into stock.

40. When any shares shall have been converted into stock the several holders of such stock may thenceforth transfer their respective interests therein or any part of such interests in the same manner and subject to the same regulations as and subject to which shares in the capital of the company may be transferred, or as near thereto as circumstances admit.

41. The stock shall confer on the holders thereof respectively the same privileges and advantages as regards participation in profits and voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company, but so that none of such privileges or advantages except the participation in profits of the company shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges and advantages. And, save as aforesaid, all the provisions herein contained shall, as far as circumstances will admit, apply to stock as well as to shares. No such conversion shall affect or prejudice any preference or other special privilege.

Increase of capital.

42. The company in general meeting may from time to time increase the capital by the creation of new shares of such amount as may be deemed expedient.

43. The new shares may be issued upon such terms and conditions, and with such rights and privileges annexed thereto, as the company in general meeting shall determine, and in particular such shares may be issued with a preferential or qualified right to dividends and in the distribution of assets of the company, and with a special right of voting.

44. The company may before the issue of new shares determine that the same or any of them shall be offered in the first instance to all the then members in proportion to the amount of the capital held by them, or make any other provision as to the issue and allotment of the new shares; but in default of any such determination, or so far as the same shall not extend, the new shares may be dealt with as if they formed part of the shares in the original ordinary capital.

45. Except so far as otherwise provided by the conditions of issue, any capital raised by the creation of new shares shall be considered part of the original ordinary capital, and shall be subject to the provisions herein contained with reference to the payment of calls and instalments, transfer and transmission, forfeiture, lien, and otherwise.

Reduction of capital. Consolidation and subdivision of shares.

46. The company may from time to time reduce the capital or subdivide and consolidate shares in the manner and with all or any of the incidents prescribed or allowed by *The Companies Act, 1908*.

General Meetings.

47. The statutory general meeting shall be held at such time within the limits of time prescribed for the statutory meeting by *The Companies Act, 1908*, and at such place as the directors may determine.

48. Subsequent general meetings shall be held once in every subsequent year, at such time and place as may be determined by the directors.

49. The above-mentioned general meetings shall be called ordinary general meetings. All other meetings of the company shall be called extraordinary general meetings.

50. The directors may whenever they think fit, and they shall upon a requisition in writing by a member or members holding not less than one-tenth of the issued capital, convene an extraordinary general meeting.

51. Any such requisition shall specify the object of the meeting required, and shall be signed by the members making the same, and shall be deposited at the office. It may consist of several documents in like form, each signed by one or more of the requisitionists. The meeting must be convened for the purposes specified in the requisition, and, if convened otherwise than by the directors, for those purposes only.

52. In case the directors for fourteen days after such deposit fail to convene an extraordinary general meeting to be held within twenty-one days from the time of such deposit, the requisitionists, or a majority in value of them, may themselves convene a meeting to be held not later than three calendar months after the date of such deposit.

53. Seven clear days' notice, specifying the place, day, and hour of any meeting, and the purpose for which it is to be held, shall be given either by advertisement or by notice sent by post, or otherwise served as hereinafter provided. Whenever any meeting is adjourned for twenty-one days or more, at least four days' notice of the place and hour of holding such adjourned meeting shall be given in like manner.

54. The accidental omission to give or non-receipt of any such notice to or by any of the members shall not invalidate any resolution passed at the meeting to which such notice related.

Proceedings at general meetings

55. The business of an ordinary general meeting (other than the statutory meeting) shall be to receive and consider the statement of income and expenditure, and the balance-sheet, the reports of the directors and of the auditor, and any matters incident thereto, to elect directors and other officers in the place of those retiring by rotation, and to decide on the recommendation of the directors as regards dividends, and to transact any other business which, by statute, ought to be transacted at an ordinary meeting. All other business transacted at an ordinary general meeting, and all business transacted at an extraordinary general meeting, shall be deemed special.

56. Five members personally present shall be a quorum for a general meeting for the choice of a chairman, the declaration of a dividend, and the adjournment of the meeting. For all other purposes the quorum for a general meeting shall be members personally present not being less than seven in number and holding or representing by proxy, as by these regulations provided, not less than one-fifth part of the issued capital of the company. No business shall be transacted at any general meeting unless the quorum requisite be present at the commencement of the business.

57. The chairman of directors shall be entitled to take the chair at every general meeting, or if there be no such chairman, or if at any meeting he shall not be present within fifteen minutes after the time appointed for holding such meeting, the members present shall choose another director as chairman, and if no director be present, or if all the directors present decline to take the chair, then the members present shall choose one of their number to be chairman.

58. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon such requisition as aforesaid, shall be dissolved; but in any other

case it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum be not present those members who are present shall be a quorum, and may transact the business for which the meeting was called.

59. Every question submitted to a meeting shall be decided in the first instance by a show of hands; and in the case of an equality of votes the chairman shall, both on show of hands and at the poll, have a casting-vote in addition to the votes or vote to which he may be entitled as a member.

60. At any general meeting, unless a poll is demanded by the chairman, or by at least five members holding or representing by proxy or entitled to vote in respect of at least one-fifth of the capital represented at the meeting, a declaration by the chairman that a resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The provision that the five members demanding a poll shall hold at least one-fifth of the capital shall not apply to a poll demanded in respect of a special resolution.

61. If a poll be demanded as aforesaid, it shall be taken in such manner and at such time and place as the chairman of the meeting may direct, and either at once or after an interval or adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand of a poll may be withdrawn.

62. The chairman of a general meeting may, with the consent of the meeting, adjourn the same from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

63. Any poll duly demanded on the election of a chairman of a meeting or on any question of adjournment shall be taken at the meeting, and without adjournment.

64. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

Votes of members.

65. On a show of hands every member present in person shall have one vote, and upon a poll every member present in person or by proxy shall have one vote for every share held by him in respect of which there is no payment in arrear.

66. Any person who is entitled to transfer any share or stock, though not the registered holder thereof, may vote at any general meeting in respect of such share or stock as if he were the registered holder if not less than forty-eight hours before the time of holding the meeting at which he proposes to vote he has satisfied the directors of his right to transfer such share or stock, or if the directors have previously admitted his right to vote at such meeting in respect thereof.

67. Where there are joint registered holders of any share or stock any one of such persons may vote at any meeting either personally or by proxy in respect of such share or stock as if he were solely entitled thereto: and if more than one of such joint holders be present at any meeting personally or by proxy, that one of the said persons so present whose name stands first on the register in respect of such share or stock shall alone be entitled to vote in respect thereof. Several executors or administrators of a deceased member in whose name any share or stock stands shall, for the purposes of this clause, be deemed joint holders thereof.

68. Votes may be given either personally or by proxy.

69. The instrument appointing a proxy shall be in writing under the hand of the appointor or his attorney, or, if such appointor is a corporation, under the hand of the chairman of directors, or managing director, or manager or attorney of such corporation. No person shall be appointed a proxy who is not a member of the company and qualified to vote, but a corporation being a member of the company may appoint any one of its officers to be its proxy.

70. The instrument appointing a proxy and the power of attorney, if any, under which it is signed shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting or adjourned meeting, as the case may be, at which the person named in such instrument proposes to vote.

71. A vote given in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal, or revocation of the proxy, or transfer of the share or stock in respect of which the vote is given, provided no intimation in writing of the death, revocation, or transfer shall have been received at the registered office of the company before the meeting.

72. A proxy may be appointed generally, or for a specified period or specified meeting; and every instrument of proxy shall, as far as the circumstances will admit, be in the form or to the effect following:

I, _____, of _____, being a member of the _____ Company (Limited), hereby appoint _____, of _____, or, failing him, _____, of _____, as my proxy to vote for me and on my behalf at the ordinary (or extraordinary, as the case may be) general meeting of the company to be held on the _____ day of _____, and at any adjournment thereof.

As witness my hand, this _____ day of _____, 19 ____.

73. No member shall be entitled to be present, or to vote on any question either personally or by proxy, or as proxy for another member, at any general meeting, or upon a poll, or be reckoned in a quorum whilst any call or other sum shall be due and payable to the company in respect of any of the shares of such member.

Directors.

74. The seven persons whose names are first signed to the memorandum of association shall be the directors of the company until the statutory meeting, when they shall go out of office.

75. The statutory meeting shall elect directors of the company. The number of directors shall be determined by the statutory meeting, and shall not be less than four or more than nine.

76. The directors shall have power to appoint any other persons to be directors at any time before the first ordinary general meeting of the company, but so that the total number of directors shall not at any time exceed the maximum number fixed as aforesaid.

77. A director may retire from his office upon giving one month's notice in writing to the company of his intention so to do; and such resignation, if not previously accepted by the other directors or director, as the case may be, shall take effect upon the expiration of such notice.

78. The directors shall be paid out of the funds of the company, by way of remuneration for their services, such sum or sums as the company may from time to time fix at a general meeting, and such remuneration shall be divided amongst them in such proportions and manner as the directors may determine.

79. The office of a director shall be vacated: a) If he become bankrupt or suspend payment or compound with his creditors; b) If he be found lunatic or become of unsound mind; c) If he absent himself from the meetings of the directors during a period of three calendar months without special leave of absence from the directors; d) If by notice in writing he resign his office; e) If he is concerned in or participates in the profits of any contract with the company, or in the profits of any works done for the company: Provided that no director shall be disqualified by reason of his being a member of an incorporated company which enters into contracts with or does any work for the company of which he is a director: Provided further that if a director shall be a member of an unincorporated firm, and shall fully disclose his interest therein to the directors, he shall not be disqualified by reason of such firm entering into contracts with or doing work for the company of which he is a director, but he shall not vote on any matter relating to such contract or work.

80. The continuing directors may act notwithstanding any vacancy in their body, but so that if the number falls below the minimum fixed by these regulations the directors shall not, except for the purpose of filling vacancies, act so long as the number is below the minimum.

Rotation of directors.

81. At the first ordinary general meeting to be held other than the statutory meeting, and at every succeeding ordinary general meeting, one-third of the directors, or, if their number is not a multiple of three, then the number nearest to but not exceeding one-third, shall retire from office. A retiring director shall retain office until the dissolution or adjournment of the meeting at which his successor is appointed.

82. The one-third or other nearest number first to retire shall, unless the directors agree among themselves, be determined by lot; in every subsequent year the one-third or other nearest number who have been longest in office shall retire. As between two or more who have been in office an equal length of time, the director to retire shall, in default of agreement between them, be determined by lot. The length of time a director has been in office shall be computed from his last election or appointment where he has previously vacated office.

83. A retiring director shall be eligible for re-election.

84. The company at any general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of qualified persons to be directors, and without notice in that behalf may fill up any other vacancies.

85. If at any general meeting at which an election of directors ought to take place the places of the retiring directors are not filled up, the retiring directors or such of them as have not had their places filled up shall, if willing, continue in office until the ordinary meeting in the next year, and so on from year to year until their places are filled up, unless it shall be determined at such meeting to reduce the number of directors.

86. The company in general meeting may from time to time increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

87. The company may by extraordinary resolution remove any director before the expiration of his period of office and appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed. Any casual vacancy occurring among the directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

88. No person not being a retiring director shall, unless recommended by the directors for election, be eligible for election to the office of director at any general meeting unless he or some other member, or firm, or corporation intending to propose or nominate him has at least seven clear days before the meeting left at the office a notice in writing under his hand signifying his candidature for the office, or the intention of such member, or firm, or corporation to propose or nominate him.

Proceedings of directors.

89. The directors may meet together for the despatch of business, adjourn, or otherwise regulate their meetings and proceedings as they may think fit, and may determine the quorum necessary for the transaction of business. Until otherwise determined, three directors shall be a quorum.

90. A director may at any time, and the secretary upon the request of a director shall, summon a meeting of the directors.

91. Questions arising at any meeting of the directors shall be determined by a majority of votes, and in case of an equality of votes the chairman shall have a second or casting vote.

92. A resolution in writing signed by all the directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly called and constituted.

93. The directors may elect a chairman of their meetings and determine the period for which he is to hold office, but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be the chairman of such meeting.

94. A meeting of the directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers, and discretions by or under the memorandum or articles of association of the company for the time being vested in or exercisable by the directors generally.

95. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed on it by the directors.

96. The meetings and proceedings of any such committee consisting of two or more members shall be governed by the provisions herein contained for regulating the meetings and proceedings of the directors, so far as the same are applicable thereto.

97. All acts done at any meeting of the directors, or by a committee of directors, or by any person acting as a director, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such directors or persons acting as aforesaid, or that they or any of them or he were disqualified, be as valid as if every person had been duly appointed and was qualified to be a director.

Minutes.

98. The directors shall cause minutes to be duly entered in the books provided for the purpose: a) Of all appointments of permanent officers; b) Of the names of the directors present at each meeting of the directors and of any committee of directors; c) Of all resolutions and proceedings of general meetings and of meetings of the directors and committees. And any such minutes of any meeting of the directors, or of any committee, or of the company, if purporting to be signed by the chairman of such meeting or by the chairman of the next succeeding meeting, shall be receivable as *prima facie* evidence of the matters stated in such minutes.

Powers of directors.

99. The management and control of the business of the company shall be vested in the directors, who, in addition to the powers and authorities by these regulations and the memorandum of association or otherwise expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the company and are not hereby or by statute expressly directed or required to be exercised or done by the company in general meeting.

100. In furtherance and not in limitation of, and without prejudice to, the general powers conferred or implied by or in the last preceding regulation and of the other powers conferred by these regulations and the memorandum of association, it is hereby expressly declared that the directors shall be intrusted with and may exercise and perform the following powers and duties: a) They may pay the costs, charges, and expenses preliminary and incidental to the promotion, formation, establishment, and registration of the company; b) They may purchase or otherwise acquire for the company any property, rights, or privileges which the company is authorised to acquire, at such price and generally on such terms and conditions as they think fit; c) They may at their discretion pay for any property, rights, or privileges acquired by or services rendered to the company, either wholly or partially in cash or in shares, bonds, debentures, or other securities of the company; d) They may from time to time take all steps and proceedings and do all acts and things they may consider advisable for carrying into effect the objects of the company; e) They may purchase, construct, erect, and maintain such buildings, machinery, and other works as may from time to time be found necessary for the purposes of the company; and they may purchase, rent, or otherwise acquire such offices, easements, lands, tenements, and hereditaments, or any interest therein, and on such terms as they may from time to time think advisable, and may accept such title to property as they may think reasonably safe. They may also from time to time let or sell any such lands, tenements, hereditaments, or interests therein as aforesaid, and generally may deal therewith as they consider most conducive to the interests of the company; f) They may appoint and, at their discretion, remove or suspend such managers, secretaries, officers, clerks, agents, workmen, and servants for permanent, temporary, or special services as they may from time to time think fit, and may determine their duties and powers and fix their salaries or emoluments, and may require security in such instances

and to such amount as they shall think fit, and may delegate to such managers, secretaries, officers, or servants such powers as they may from time to time deem advisable; g) They may institute, conduct, defend, compound, or abandon any legal proceedings by and against the company or its officers, or otherwise concerning the affairs of the company, and also may compound and allow time for payment or satisfaction of any debts due, and claims and demands by or against the company; h) They may refer any claims or demands by or against the company to arbitration, and observe and perform the awards; i) They may make and give receipts, releases, and other discharges for money payable to the company, and for the claims and demands of the company; j) They may from time to time establish and, at their discretion, discontinue branches or agencies on behalf of the company at any places either in or out of New Zealand, and make such regulations for the management of such branches or agencies on behalf of the company at any places either in or out of New Zealand as they shall think fit, and may appoint agents for the transaction of the business of the company upon such terms and with such powers and authorities as the directors think expedient, and may alter, vary, or revoke from time to time any such appointment, powers, or authorities; k) They may from time to time provide for the management of the affairs of the company abroad in such manner as they think fit, and in particular appoint any persons to be the attorneys or agents of the company, with such powers (including powers to sub-delegate) and upon such terms as may be thought fit, and may alter, vary, or revoke from time to time any such appointment and any such powers; l) They may out of the available cash capital or profits of the company set aside such sum or sums as they may think fit as a reserve fund; and they may invest the several sums so set aside upon such investments as they may think fit, and may from time to time deal with and vary such investments and dispose of all or any part thereof for the benefit of the company; but they shall have power to employ the assets constituting the reserve fund in the business of the company, and that without being bound to keep the same separate from the other assets; m) They may from time to time make, vary, and repeal any rules and regulations for governing the company's officers or servants, or any section thereof; n) They may enter into all such negotiations, contracts, and agreement, and rescind and vary and execute and do all such acts, deeds, and things in the name and on behalf of the company as they may consider expedient for or in relation to any of the matters aforesaid or otherwise for the purposes of the company; o) They may make regulations for the use and safe custody of the common seal, provided always that every instrument to which the seal be affixed shall be signed by at least two directors and the secretary; p) They may make and execute all such assurances and instruments as may be necessary, provided that the same shall be signed by two directors, or by one director and the secretary; q) They may appoint a temporary substitute for the secretary, who shall for the purposes of these regulations be deemed to be the secretary; r) They may manage and deal with or acquire the ownership of any real or personal property which may come into the possession of the company as security for any debt in such manner as they may think fit, with as full powers as an individual would have in like case; s) They may make such provision as they think fit respecting the keeping and discontinuance of branch registers.

Borrowing powers.

101. The directors may from time to time, and without negating any implied power to borrow, at their discretion borrow for the purposes of the company from any persons, firms, or corporations any sum or sums of money on the security of all or any of the company's property (real or personal), assets, and effects, both present and future, inclusive or exclusive of its unpaid calls or unpaid capital, or any part thereof, either under legal mortgages or charges, with powers of sale and other usual powers, or by the issue of mortgage debentures, debentures, bonds, obligations, or any other securities of the company; and any such mortgage debentures, debentures, bonds, obligations, or securities as aforesaid may be issued on the terms that the amount to be secured may be paid up by instalments, and that the debentures may be paid off by periodical and other drawings, and generally on such other terms and conditions as to rate of interest or otherwise as the directors think fit: and the directors may also borrow money from the company's bankers on overdraft or otherwise, with or without security.

102. Every debenture or security for securing the payment of money issued by the company may be so framed that the moneys thereby secured shall be assignable free from any equities between the company and the person to whom the same may be issued.

103. Any mortgage debentures, debentures, bonds, obligations, or other securities may be issued at a discount, premium, or otherwise, and with any special privileges as to redemption, surrender, drawings, and otherwise.

104. The directors shall register in accordance with *The Companies Act, 1908*, all mortgages and charges specifically affecting the property of the company.

Seal.

105. The directors shall forthwith provide a common seal for the company, and they shall have power from time to time to destroy the same and substitute a new seal in lieu thereof.

Dividends.

106. The directors may, with the sanction of the company in general meeting, declare a dividend, to be paid to the members in proportion to their share capital.

107. No dividend shall be payable except out of the net profits arising from the business of the company, and no dividend shall carry interest as against the company.

108. No larger dividend shall be declared than is recommended by the directors, but the company in general meeting may declare a smaller dividend.

109. The directors may deduct from the dividend payable to any member all such sums of money as may be due and payable by him to the company on account of calls, instalments, or otherwise, or any debt, liability, or engagement.

110. In case several persons are registered as the joint holders of any shares or stock, any one or more of such persons may give effectual receipts for all dividends and payments on account of dividends in respect of such shares or stock; but the directors may, if they think fit, require the receipt of all the holders of such shares or stock.

111. A transfer of any shares or stock shall not pass the right to any dividend declared thereon before the registration of the transfer.

112. Unless otherwise directed, dividends may be paid by cheques or warrants sent through the post to the registered address of the member or person to whom the dividend is payable, or in case of joint holders of any shares (subject to arrangement between such joint holders consented to by the directors) to that one whose name stands first in the register in respect of such shares, and every cheque or warrant so sent shall be made payable to the order of the person to whom it is sent, but the company shall not be responsible for the loss in transmission of any cheque or warrant so sent, whether sent at the request of a member or otherwise.

Accounts.

113. The directors shall cause true accounts to be kept of the sums of money received and expended by the company, and the matters in respect of which such receipts and expenditure take place, and of the assets, credits, and liabilities of the company.

114. The books of account shall be kept at the office of the company, or at such other place or places as the directors think fit.

115. The directors shall from time to time determine whether, and to what extent, and at what times and places, and under what conditions or regulations the accounts and books of the company, or any of them, shall be open to the inspection of members, and no member shall have any right of inspecting any book or document of the company except as conferred by statute or authorised by the directors, or by a resolution of the company in general meeting.

116. At the ordinary general meeting in every year, except the statutory meeting, the directors shall lay before the company a statement of the income and expenditure, and a balance-sheet (in the form annexed to this Table, or as near thereto as circumstances will admit) containing a summary of the property and liabilities of the company, made up to a date not more than three months before the meeting, from the time when the last preceding statement and balance-sheet were made, and, in the case of the first statement and balance-sheet, from the incorporation of the company.

117. Every such statement shall be accompanied by a report of the directors as to the state and condition of the company, and as to the amount which they recommend to be paid out of the profits by way of dividend or bonus to the members, and the amount standing to the credit of the reserve fund, distinguishing the amount, if any, which they have added to such reserve fund out of profits; and the statement, report, and balance-sheet shall be signed by the chairman, or, in his absence, by at least one director, and countersigned by the secretary.

118. A printed copy of such statement of account, report, and balance-sheet shall, seven days previously to the meeting, be served on each member.

Audit.

119. Once at least in every year the accounts of the company shall be examined and the correctness of the statement and balance-sheet ascertained by one or more auditor or auditors, as required by *The Companies Act, 1908.*

Notices.

120. A notice may be served by the company on any member, either personally or by sending it through the post in a prepaid envelope or wrapper addressed to such member at his registered place of address.

121. Each holder of registered shares or stock whose registered place of address is not in New Zealand may from time to time notify in writing to the company some place in New Zealand which shall be deemed his registered place of address for the purpose of the last preceding regulation; but, in the absence of any such notification, he shall not be entitled to have any notice sent to him from the company, whose registered office shall be deemed the registered address of such member for all purposes whatever, and all proceedings taken without other notice to any such member shall be as valid as if he had due notice thereof.

122. All notices shall, with respect to any registered shares or stock to which persons are jointly entitled, be given to whichever of such persons is named first in the register, and such notice so given shall be sufficient notice to all the holders of such shares or stock.

123. Any notice sent by post shall be deemed to have been served on the day following the day on which the envelope or wrapper containing the same shall have been posted, and in

proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and put into the post-office.

124. Every person who by operation of law, transfer, or other means whatsoever shall become entitled to any share or stock shall be bound by every notice in respect of such share or stock which previously to his name and address being entered on the register shall have been duly given to the person from whom he derives his title to such share or stock.

125. Any notice or document delivered or sent by post to or left at the registered address or address for service of any member in pursuance of these regulations shall, notwithstanding such member be then deceased or shall be in any way incapacitated, and whether the company have notice of his decease or incapacity or not, be deemed to have been duly served in respect of his shares or stock, whether held solely or jointly with other persons, until some other person be registered in his stead as the holder or joint holder thereof; and such service shall for all purposes be deemed a sufficient service of such notice or document on his heirs, executors, administrators, successors, assigns, or committees, and all persons (if any) jointly interested with him in any such shares or stock.

126. The signature to any notice to be given by the company may be written, typewritten, or printed.

127. Where a given number of days' notice, or notice extending over any period, is required to be given, the day of service shall not be, but the day upon which such notice will expire shall be, included in such number of days or other period.

Indemnity of directors.

128. Every director of the company shall be indemnified by the company against all costs, losses, and expenses which he may incur or become liable to by reason of any contract entered into or act or thing done by him as such director in the discharge of and within the scope of his duties.

Branch registers.

129. The company may cause to be kept in any place a branch register or branch registers, and may make such provision as it may think fit respecting the keeping or discontinuance of, branch registers, subject to any law in force regulating the keeping or discontinuance of branch registers.

Interpretation.

130. In these regulations, unless there be something in the subject or context inconsistent therewith: "The office" means the registered office for the time being of the company; "The register" means the register of members to be kept pursuant to *The Companies Act, 1908*; "Month" means calendar month; "In writing" means written or typewritten or printed, or partly written or partly typewritten or partly printed; "The seal" means the common seal of the company; "Capital" means the capital for the time being of the company; "The directors" means the directors for the time being of the company; "Members" or "shareholders" means the holders of shares for the time being. Words importing the singular number only include the plural number, and *vice versa*. Words importing the masculine gender only include the feminine gender. Words importing persons include firms and corporations, and "firm" includes "partnership".

Balance-sheet of the Company, made up to, 19...

Dr.

Capital and Liabilities.

I. Capital.		Showing—	£ s. d.	£ s. d.
	1	The number of shares		
	2	The amount paid per share		
	3	If any arrears of calls, the nature of the arrear, and the names of the defaulters .		
	4	The particulars of any forfeited shares . .		
II. Debts & Liabilities of the Company.		Showing—		
	5	The amount of loans on mortgages or debentures bonds		
	6	The amount of debts owing by the company, distinguishing—		
		a) Debts for which acceptances have been given		
		b) Debts to tradesmen for supplies of stock-in-trade or other articles . . .		
		c) Debts for law expenses		
		d) Debts for interest on debentures or other loans		
		e) Unclaimed dividends		
		f) Debts not enumerated above		

		£ s. d.	£ s. d.
VI. Reserve Fund.	Showing— The amount set aside from profits to meet contingencies		
VII. Profit and Loss.	Showing— The disposable balance for payment of dividend, etc.		
Contingent Liabilities.	Claims against the company not acknowledged as debts Moneys for which the company is contingently liable		
<i>Cr.</i> Property and Assets.			
III. Property held by the Company.	7 Showing— Immovable property, distinguishing— a) Freehold land b) Freehold buildings c) Leasehold buildings 8 Movable property, distinguishing— d) Stock-in-trade e) Plant The cost to be stated, with deductions for depreciation in value as charged to the reserve fund or to profit and loss	£ s. d.	£ s. d.
IV. Debts owing to the Company.	9 Showing— Debts considered good for which the company holds bills or other securities . . . 10 Debts considered good for which the company holds no security 11 Debts considered doubtful and bad . . . Any debt due from a director or other officer of the company to be separately stated.		
V. Cash and Investments.	Showing— 12 The nature of investment and rate of interest 13 The amount of cash, where lodged, and if bearing interest		

Table B. Form of Statement referred to in Part IV of "The Companies Act, 1908".

The capital of the company is , divided into shares¹⁾ of each. The number of shares issued is . Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the 1st day of January [or July] were:

Debts owing to sundry persons by the company:

On judgment, £
On specialty, £
On notes or bills, £
On simple contracts, £
On estimated liabilities, £

The assets of the company on that day were:

Government securities [*stating them*], £
Bills of exchange and promissory notes, £
Cash at bank, £
Other securities, £

Table C. Table of Fees to be paid to the Registrar by a Company having a Capital divided into Shares.

	£	s.	d.
For registration of a company whose nominal capital does not exceed £ 2,000, a fee of	5	0	0
For registration of a company whose nominal capital exceeds £ 2,000: The above fee of £ 5, with the following additional fees, regulated according to the amount of nominal capital, that to say:			

¹⁾ If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

	£	s.	d.
For every £1,000 of nominal capital or part of £1,000 after the first £2,000 up to £5,000	1	0	0
For every £1,000 of nominal capital, or part of £1,000 after the first £5,000 up to £100,000	0	5	0
For every £1,000 of nominal capital or part of £1,000 after the first £100,000	0	1	0
For registration of any increase of capital made after the first registration of the company: The same fees per £1,000 or part of £1,000 as would have been payable if such increased capital had formed part of the original capital at the time of registration:			
Provided that no company shall be liable to pay in respect of nominal capital on registration or afterwards any greater amount of fees than £50, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees for registration under this Act: The same fee as is charged for registering a new company.			

Table D. Table of Fees to be paid to the Registrar by a Company not having a Capital divided into Shares.

	£	s.	d.
For registration of a company whose number of members as stated in the articles of association does not exceed twenty	5	0	0
For registration of a company whose number of members as stated in the articles of association exceeds twenty, but does not exceed a hundred	10	0	0
For registration of a company whose number of members as stated in the articles of association exceeds a hundred, but is not stated to be unlimited: The above fee of £10, with an additional 5 s. for every fifty members or less number than fifty members after the first hundred.			
For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of	20	0	0
For registration of any increase in the number of members made after the registration of the company, in respect of every fifty members or less than fifty members of such increase	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than £20 in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees for registration under this Act: The same fee as is charged for registering a new company.			

Table E. Miscellaneous Fees.

	£	s.	d.
For recording any extension of the objects or purposes of a company under Part I.	1	0	0
For registering any document, other than the memorandum of association, hereby required or authorised to be registered	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the Registrar, and not otherwise charged	0	5	0
For any certificate of incorporation after the first	0	5	0
For a certified copy of or extract from any document	0	5	0
For a copy of or extract from any document, over and above the fee for certifying the same, for each folio of seventy-two words, not exceeding	0	0	6
For every inspection of any document	0	1	0

Third Schedule.

Form A. Memorandum of Association of a Company limited by Shares.

1. The name of the company is "The Wellington Steamship Company (Limited)".
2. The objects for which the company is established are: The conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing of all other things incidental or conducive to the attainment of the above object.
3. The liability of the members is "limited".
4. The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

We, the several persons whose names and addresses are subscribed hereto, are desirous of being formed into a company in pursuance of this memorandum of association, and we agree to take the number of shares in the capital of the company set opposite our respective names.

Name, Address, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
1. John Black, of merchant	10
2. John Grey, of "	15
3. Thomas Green, of "	15
4. John Scarlet, of "	10
5. Caleb White, of "	5
6. Andrew Brown, of "	15
7. Caesar White, of "	10
Total shares taken	80
Dated the day of, 19	
Witness to the above signatures:	
A. C. S., Lampton Quay, Wellington.	

Form B. Memorandum and Articles of Association of a Company limited by Guarantee, and not having a Capital divided into Shares.

Memorandum of Association.

1. The name of the company is "The New Zealand Trade Development Society (Limited)".

2. The objects for which the company is established are: a) To procure information for members as to suitable markets for all commodities produced or manufactured in New Zealand, and as to the commercial standing and responsibility of persons abroad with whom members may transact business; b) To arrange for and organize the placing of such commodities as aforesaid on such markets as may be considered suitable; c) To [as the case may be]; and the doing of all things incidental or conducive to the attainment of the above objects.

3. Every member of the company undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time when he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding ten pounds.

We, the several persons whose names and addresses are subscribed hereto, are desirous of being formed into a company in pursuance of this memorandum of association:—

Names, Addresses, and Description of Subscribers.

1. John Jones, of merchant.
2. John Smith, of "
3. Thomas Green, of "
4. John Thomson, of "
5. Caleb White, of "
6. Andrew Brown, of "
7. Caesar White, of "

Dated the day of, 19

Witness to the above signatures:

A. B., No. 13, Queen Street, Auckland.

Articles of Association, to accompany preceding Memorandum of Association.

1. The company, for the purpose of registration, is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of members.

3. Every person shall be deemed to have agreed to become a member of the company who, being directly interested in any producing or manufacturing business in New Zealand, is nominated as a member by any five members of the company, and consents in writing to such nomination.

General meetings.

4. The first general meeting shall be held at such time, not being more than three months after the incorporation of the company, and at such place as the directors determine.

5. Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as the directors determine.

6. The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

7. The directors may whenever they think fit, and shall upon a requisition in writing by any five or more members, convene an extraordinary general meeting.

8. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

9. Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting; if they do not convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other five members, may themselves convene a meeting.

Proceedings at general meetings.

10. Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

11. All business transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets, and the ordinary report of the directors, shall be deemed to be special business.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows, that is to say: if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that the quorum shall not in any case exceed thirty.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting such chairman is not present at the time of holding the same, the members present shall choose one of their number to be chairman.

16. The chairman may, with the consent of the meeting, adjourn any meeting from time to time, and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Votes of members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or an idiot he may vote by his committee, and if any member is a minor he may vote by his guardian, or by any one of his guardians, if more than one.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointer, or, if such appointer is a corporation, under its common seal.

23. No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form:

Company (Limited).

I, A. B., of _____, being a member of the _____ Company (Limited), hereby appoint _____, of _____, as my proxy, to vote for me and on my behalf at the ordinary [or extraordinary, as the case may be] general meeting of the company, to be held on the _____ day of _____ next, and at any adjournment thereof [or at any meeting of the company that may be held in the year _____].

As witness my hand, this _____ day of _____, 19 ____.

Signed by the said A. B., in the presence of } A. B.
C. D., }

[Add occupation and residence.]

Directors.

25. The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall, for all the purposes of this Act, be deemed to be directors.

Powers of directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors that would have been valid if such regulation had not been made.

Election of directors.

28. The directors shall be elected annually by the company in general meeting.

Business of company.

[Here insert rules as to mode in which business is to be conducted.]

Accounts.

29. The accounts of the company shall be audited by a committee of five members, to be called the Audit Committee.

30. The first Audit Committee shall be nominated by the directors out of the body of members.

31. Subsequent Audit Committees shall be nominated by the members at the ordinary general meeting in each year.

32. The Audit Committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same, with the accounts and vouchers relating thereto.

33. The Audit Committee shall be supplied with a list of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company. They may at the expense of the company employ accountants or other persons to assist them in investigating such accounts, and they may examine the directors or any other officers of the company as to such accounts.

34. The Audit Committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

35. A notice may be served by the company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

36. Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post-office.

Winding up.

37. The company shall be wound up voluntarily whenever an extraordinary resolution, as defined by *The Companies Act, 1908*, is passed requiring the company to be wound up voluntarily.

Names, Addresses, and Descriptions of Subscribers.

1. John Jones, of merchant.
2. John Smith, of "
3. Thomas Green, of "
4. John Thomson, of "
5. Caleb White, of "
6. Andrew Brown, of "
7. Caesar White, of "

Dated the . . . day of . . . , 19 . . .

Witness to the above signatures:

A. B., No. 13, Queen Street, Auckland.

Form C. Memorandum of Association of a Company limited by Guarantee, and having a Capital divided into Shares.

1. The name of the company is "The Wakatipu Carrying Company (Limited)".

2. The objects for which the company is established are: The encouragement of travelling in the Lake District of Otago by providing conveyances by land and water for the accommodation of travellers, and the doing of all other things incidental or conducive to the attainment of the above object.

3. Every member of the company undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding twenty pounds.

4. The capital of the company shall consist of two hundred thousand pounds, divided into two thousand shares of one hundred pounds each.

We, the several persons whose names and addresses are subscribed hereto, are desirous of being formed into a company in pursuance of this memorandum of association, and agree to take the number of shares in the capital of the company set opposite our respective names:

Names, Addresses, and Descriptions of Subscribers.		Number of Shares taken by each Subscriber.
1. John Jones, of	merchant	200
2. John Smith, of	"	25
3. Thomas Green, of	"	30
4. John Thomson, of	"	40
5. Caleb White, of	"	15
6. Andrew Brown, of	"	5
7. Caesar White, of	"	10
Total shares taken		325

Dated the day of , 19 .
Witness to the above signatures:
A. B., Queenstown.

Form D. Memorandum and Articles of Association of an Unlimited Company having a Capital divided into Shares.

Memorandum of Association.

1. The name of the company is "The Patent Stereotype Company".

2. The objects for which the company is established are: The working of a patent method of founding and casting stereotype plates, of which method John Smith, of Wellington, is the sole patentee.

We, the several persons whose names are subscribed hereto, are desirous of being formed into a company in pursuance of this memorandum of association:

Names, Addresses, and Descriptions of Subscribers.

1. John Jones, of merchant.
2. John Smith, of "
3. Thomas Green, of "
4. John Thomson, of "
5. Caleb White, of "
6. Andrew Brown, of "
7. Abel Brown, of "

Dated the day of , 19 .
Witness to the above signatures:
A. B., Lambton Quay, Wellington.

*Articles of Association, to accompany the preceding Memorandum of Association.
Capital of the company.*

The capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

Application of Table A.

All the articles of Table A in the second Schedule of *The Companies Act, 1908*, shall be deemed to be incorporated with these articles, and to apply to the company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names:

Names, Addresses, and Descriptions of Subscribers.		Number of Shares taken by each Subscriber.
1. John Jones, of	merchant	1
2. John Smith, of	"	5
3. Thomas Green, of	"	2
4. John Thompson, of	"	2
5. Caleb White, of	"	3
6. Andrew Brown, of	"	4
7. Abel Brown, of	"	1
Total shares taken		18

Dated the day of , 19 .
Witness to the above signatures:
A. B., Lambton Quay, Wellington.

Form E. Summary of Capital and Shares of the Company, made up to the day of .

Nominal capital, £ , divided into shares of £ each.
 Number of shares taken up to the day of , 19 : .
 Number of shares issued for cash: .
 Number of shares issued partly for cash: .
 Number of shares issued otherwise than for cash: .
 Called up on each share issued for cash: £ .
 Called up on each share issued partly for cash: £ .
 Total amount of calls received: £ .
 Total amount of calls unpaid: £ .
 Total amount of shares forfeited: £ .

List of Persons holding Shares in the Company on the day of , and of Persons who have held Shares therein at any Time during the Year immediately preceding the said day of , showing their Names and Addresses, and an Account of Shares so held.

Folio in Register Leger containing Particulars.	Names, Addresses, and Occupations of Members. (a)				Account of Shares.				Remarks.	
					Shares held by existing Members on the day of .	Additional Shares held by existing Members during preceding Year.		Shares held by Persons no longer Members.		
	Surname.	Christian Name.	Address.	Occu- pation.		Number.	Date of Transfer.	Number.		Date of Transfer.

a) Including persons who have ceased to be members during the preceding year. Names of directors are distinguished by an asterisk, thus*).

Fourth Schedule.

1. Affidavit on Application for Dissolution of Company.

I*) [or We†)], of "The Company (Limited)", incorporated under *The Companies Act, 1908*, do hereby make oath and say,—

That the nominal capital of the said company is £ , in shares of £ each.

That the shares have been fully paid up.

That the company has no assets, and has ceased to carry on business.

And I [or we] do hereby apply for declaration of dissolution of such company.

C. D.
E. F.

Sworn before me, this day of , 19 .

A. B.

*) Chairman or Manager. †) Two of the Board of Directors or of the shareholders of the company.

2. Notice of Affidavit being lodged.

I, , Registrar of Companies, do hereby give notice that an affidavit, a copy of which is hereunder given, by*) , of "The Company (Limited)", has been lodged with me, and that, unless notice of objection be lodged with me within sixty days of this date, I shall proceed to declare the said company to be dissolved, in manner provided by "The Companies Act, 1908".

Signed this day of , 19 . , Registrar.

*) Chairman, manager, or two directors, or two shareholders.

3. Notice of Objection.

To the Registrar of Companies.

I, , a shareholder in [or a creditor of] "The Company (Limited)", do hereby give notice that I object to a declaration of the dissolution of the said company upon the grounds set forth in the statutory declaration hereto attached.

Dated at , this day of , 19 .

C. D.

4. Notice of Objection being lodged.

In the matter of "The Companies Act, 1908", and in the matter of the affidavit and application of*) , of "The Company (Limited)", requesting me to declare the said company to be dissolved.

I HEREBY give notice that, inasmuch as an objection to such application has been lodged with me by A. B., a shareholder [or creditor] of the said company, the above-mentioned application cannot be granted.

Dated at , this day of , 19 .

, Registrar.

*) Chairman, manager, or two directors, or two shareholders.

5. Notice of Dissolution of Company.

In the matter of "The Companies Act, 1908", and in the matter of the affidavit and application of*) , of "The Company (Limited)".

I HEREBY notify that no objection to such application having been made and lodged with me, as by the said Act required, I do now declare such company to be dissolved.

Dated at , this day of 19 .

, Registrar.

*) Chairman, manager, or two directors, or two shareholders.

(Schedules V. and VI. relate to statements of mining companies.)

Companies Amendment Act.

**No. 26 of 1910. An Act to amend the Companies Act, 1908
(21st November, 1910).**

Short title. 1. This Act may be cited as the *Companies Amendment Act, 1910*, and it shall be read together with and deemed part of the *Companies Act, 1908*.

A company may reissue redeemed debentures in certain cases. 2. 1. Where either before or after the passing of this Act, a company has redeemed any debentures previously issued, the company, unless the articles of association of the company or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued, or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of reissue; and where a company has purported to exercise such a power, the company shall have power, and shall be deemed always to have had power, to reissue the debentures either by reissuing the same debentures or by issuing other debentures in their place; and upon such a reissue the person entitled to the debentures shall have and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued. 2. Where, with the object of keeping debentures alive for the purpose of reissue, they have, either before or after the passing of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a reissue for the purposes of this section. 3. Where a company has, either before or after the passing of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited. 4. The reissue of a debenture or the issue of another debenture in its place under the power by this section given to or deemed to have been possessed by a company, whether the issue or reissue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures to be issued. Provided that any person lending money on the security of a debenture reissued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security, without payment of the stamp duty or any penalty in respect thereof, unless he had notice that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp duty and penalty. 5. Nothing in this section shall prejudice: a) the operation of any judgment or order of a Court of competent jurisdiction pronounced or made

before the passing of this Act as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished reserved to a company by its debentures or the securities for the same.

Sale of Goods Act.

No. 168 of 1908. An Act to consolidate certain Enactments of the General Assembly relating to the Sale of Goods.

Short title. Enactments consolidated. 1. 1. The short title of this Act is *The Sale of Goods Act, 1908*. 2. This Act is a consolidation of the enactments mentioned in the Schedule hereto. 3. All matters and proceedings commenced under the said enactments, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act. 4. This Act is divided into Parts, as follows: Part I. Formation of the Contract (Sections 3 to 17). Part II. Effects of the Contract (Sections 18 to 28). Part III. Performance of the Contract (Sections 29 to 39). Part IV. Rights of Unpaid Seller against the Goods (Sections 40 to 49). Part V. Actions for breach of the Contract (Sections 50 to 55). Part VI. Supplementary (Sections 56 to 60). — E. § 63, 64; V. 1, 2; T. 1, 2; S. A. 61, 62; Q. 1, 2; W. A. 61, 62.

Interpretation. 2. 1. In this Act, if not inconsistent with the context: "Action" includes counter-claim and set-off. "Buyer" means a person who buys or agrees to buy goods. "Contract of sale" includes an agreement to sell as well as a sale. "Delivery" means voluntary transfer of possession from one person to another. "Document of title to goods" includes any bill of lading, dock-warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by indorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented. "Fault" means wrongful act or default. "Future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale. "Goods" includes all chattels personal other than money or things in action. The term includes emblements, growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale. "Plaintiff" includes defendant counterclaiming. "Property" means the general property in goods, and not merely a special property. "Quality of goods" includes their state or condition. "Sale" includes a bargain and sale, as well as a sale and delivery. "Seller" means a person who sells or agrees to sell goods. "Specific goods" means goods identified and agreed upon at the time a contract of sale is made. "Warranty" means an agreement with reference to goods which are the subject of a contract of sale, but collateral to the main purpose of such contract, the breach of which gives rise to a claim for damages, but not to a right to reject the goods and treat the contract as repudiated. "Writ of execution" means any writ of sale, warrant of distress, or other writ or warrant of execution under which chattels of any kind may be seized or taken to satisfy process issued out of any Court. 2. = V. § 3 (2). 3. = V. § 3 (3), except: "bankruptcy" is substituted for "insolvency". 4. = V. § 3 (4). — E. § 62; V. 3; T. 3; S. A. 60; Q. 3; W. A. 60.

Part I. Formation of the Contract. Contract of sale.

3. = V. § 6.

4. = V. § 7, except: "means" is substituted for "mean".

Formalities of the contract.

5. = V. § 8.

6. = V. § 9. — E. § 4; V. 9; T. 9; S. A. 4; Q. 7; W. A. 4. — The time of delivery may be of the essence of a particular contract of sale, and if so it must be incorporated in the memorandum. — *Matthews v. Dampney Bros.*, 19 L. R. (N. Z.) 557. A memorandum signed by one of two vendors, addressed to the manager of the purchaser, mentioning the subject-matter of the contract, and referring to a cheque, but not naming its amount, is not a sufficient memorandum in writing within this section. — *Maher et al. v. The New Zealand Loan and Mer-*

cantile Agency Co. Ltd., 16 L. R. (N. Z.) 120. A written contract is not unenforceable under this section merely because it does not contain the representations which induced it. — *Johnston v. McRae*, 26 L. R. (N. Z.) 299.

Subject-matter of contract.

7—9. = V. § 10—12.

The price.

10—11. = V. § 13—14.

Conditions and warranties.

12. = V. § 15. — E. § 10; V. 15; T. 15; S. A. 10; Q. 13; W. A. 10. — For a case where the time of delivery of sheep was of the essence of the contract, see *Matthews v. Dampney Bros.*, 19 L. R. (N. Z.) 557.

13—14. = V. § 16—17.

15. = V. § 18. — E. § 13; V. 18; T. 18; S. A. 13; Q. 16; W. A. 13. — A description of goods as “slightly damaged” amounts to a warranty that they are not more than slightly damaged. — *Brockley v. Burt*, 1 J. R. (N. Z.) 154. For a case holding that a statement that certain lambs were “well-grown, good lambs, fit for rape” was, under the facts, a statement of opinion only, and not a sale by description, see *Johnston v. McRae*, 26 L. R. (N. Z.) 299.

16. = V. § 19. — E. § 14; V. 19; T. 19; S. A. 14; Q. 17; W. A. 14. — In a contract for the sale of the output of the cheese of a dairy factory for a defined period, at an uniform price, there is no implied warranty that the cheese should be of first-class quality only. — *The German Bay Co-operative Dairy Co. Ltd. v. Scott*, 20 L. R. (N. Z.) 475. Where the buyer has examined the goods there is no implied warranty against defects which such examination ought to have revealed, and the maxim *caveat emptor* applies. — *Langley v. Colbeck & Co.*, 14 L. R. (N. Z.) 540. Where an opportunity to examine the goods exists the purchaser is bound to avail himself of the opportunity. — *Zohrab & Newman v. Fuller*, L. R. 3 S. C. (N. Z.) 210. Where the purchaser selects a specific chattel the maxim *caveat emptor* applies. — *Carroll v. Manson*, L. R. 2 S. C. (N. Z.) 369.

Sale by sample.

17. = V. § 20. — E. § 15; V. 20; T. 20; S. A. 15; Q. 18; W. A. 15. — In a sale by sample the purchaser must be given a reasonable opportunity of comparing the bulk of the goods sent him with the sample, and to reject the goods if not according to sample. The property passes upon delivery, subject to being divested upon rejection. The rejection must be unequivocal. — *The Canterbury Seed Co. Ltd. v. The J. G. Ward Farmers' Association Ltd.*, 13 L. R. (N. Z.) 96. The rejection must be of the entire quantity, and be a repudiation of the whole contract. — *Young v. Walker*, 1 J. R. (N. Z.) 72. Evidence that a sale is a sale by sample is admissible even though the memorandum of the contract does not refer to a sample. — *Lazarus v. Luhning*, Mac. (N. Z.) 64. Cp. now *Corry & Co. v. Harding et al.*, 26 L. R. (N. Z.) 361.

Part II. Effects of the Contract.

Transfer of property as between buyer and seller.

18—19. = V. § 21—22.

20. = V. § 23, except: in Rule 5 (1) “expressed” is substituted for “express”; in Rule 5 (2) “or custodier” is omitted. — E. § 18; V. 23; T. 23; S. A. 18; Q. 21; W. A. 18. — Where there is a contract for the sale of a certain quantity of goods, part of a larger quantity belonging to the seller, the title does not pass until the goods sold are definitely appropriated to the buyer. — *Corry & Co. v. Harding et al.* 26 L. R. (N. Z.) 361. For a case where under the facts there was a sufficient appropriation see *Smellie v. Shand*, Mac. (N. Z.) 67.

21. = V. § 24, except: in 1. “the” is omitted before “disposal”; in 2. “or custodier” is omitted after “bailee”.

22. = V. § 25, except: “or custodier” is omitted after “bailee”.

Transfer of title.

23. 1. = V. § 26 (1). 2. Provided also that nothing in this Act shall affect: a) The provisions of *The Mercantile Law Act, 1908*, or any other enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof; b) The validity of any contract of sale under any special common law or statutory power of sale, or under the order of a Court of competent jurisdiction.

24. = V. § 27, except: in 2. “horses” is substituted for “cattle”. A new subsection is added: 3. Nothing in this section or elsewhere in this Act shall be construed to create a market over in New Zealand.

25. = V. § 28.

26. = V. § 29, except: “theft” is substituted for “larceny”.

27. 1. = V. § 30 (1). 2. Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for him, of the goods or documents of title, under any sale, pledge, or other disposition thereof, or under any agreement for sale, pledge or other disposition thereof, to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner: Provided that if the lien or other right of the original seller is expressed in an instrument duly registered under *The Chattels Transfer Act, 1908*, and if the person selling, pledging, or disposing of the goods is the mortgagor or bailee named in such instrument, then the person receiving the goods shall be deemed to have had notice of the contents of such instrument. 3. In this section "mercantile agent" has the same meaning as in Part I. of *The Mercantile Law Act, 1908*. — E. § 25; V. 30; T. 30; S. A. 25; Q. 27; W. A. 25. — I think that it is clear that subsection 1 of section 27 of "The Sale of Goods Act, 1895," applies only in cases in which the relation of vendor and purchaser continues, and not to the cases in which, the sale having been completed by delivery, a different relation is subsequently created between the parties under another contract. The words "or is," after the word "continues" and before the words "in possession," in this subsection, are satisfied by holding them applicable to cases in which the goods, not being in the actual possession of the vendor at the time of sale, afterwards come into his possession, but have not been delivered to the purchaser. *Mitchell v. Jones*, 24 L. R. (N. Z.) 932. (Per Edwards, J.)

Effect of writs of execution. 28. 1. A writ of execution against goods binds the property in the goods of the execution debtor as from the time when the writ is delivered to the sheriff to be executed; and, for the better manifestation of such time, the sheriff shall, without fee, upon the receipt of any such writ, indorse on the back thereof the hour, day, month, and year when he received the same: Provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ under which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the Sheriff. 2. In this section the term "sheriff" includes any officer charged with the enforcement of a writ of execution. — E. § 26; V. 31; T. 31; S. A. 26; Q. 28; W. A. 26.

Part III. Performance of the Contract.

29—30. = V. § 32—33.

31. = V. § 34. — E. § 29; V. 34; T. 34; S. A. 29; Q. 31; W. A. 29. — In a sale of cattle deliverable "on or about" a certain date evidence may be admitted to show that according to the usage of trade in such cases a reasonable time on either side of the date named is allowed. — *Lockhart v. Wilkin, Mac.* (N. Z.) 120.

32. = V. § 35. — E. § 30; V. 35; T. 35; S. A. 30; Q. 32; W. A. 30. — Where the seller delivers to the buyer a quantity of goods less than that contracted for, and the buyer accepts delivery, he must pay the value thereof, which, when a price has been set in the contract, is the contract price. — *Smith v. Johnston*, L. R. 3 C. A. (N. Z.) 270.

33. = V. § 36. — E. § 31; V. 36; T. 36; S. A. 31; Q. 33; W. A. 31. — As to what constitutes a reasonable delivery by instalments, see *The Picturesque Atlas Publishing Co. Ltd. v. Harbottle*, 10 L. R. (N. Z.) 348; *Geary v. Bowerman Bros*, 11 L. R. (N. Z.) 60; *Bowerman et al. v. Calderm*, 11 L. R. (N. Z.) 392. Cp. *Bowerman v. Grieve*, 9 L. R. (N. Z.) 157.

34. = V. § 37. — E. § 32; V. 37; T. 37; S. A. 32; Q. 34; W. A. 32. — Where goods have passed out of the control of the seller and have become subject to the control of the buyer, but are still in the hands of the carrier, the risk of loss is with the buyer. — 4 J. R. N. S. (S. C.) (N. Z.) 73.

35—38. = V. § 38—41.

39. = V. § 42, except: "provided that" is inserted before "nothing in this section".

Part IV. Rights of unpaid Seller against the Goods.

40—41. = V. § 43—44.

Unpaid seller's lien.

42. = V. § 45, except: in 2. "or custodian" is omitted. — E. § 41; V. 45; T. 45; S. A. 40; Q. 42; W. A. 40. — See *Teschemaker v. McLean, Mac.* (N. Z.) 1, 10.

43. = V. § 46.

44. = V. § 47, except: "or custodier" is omitted.

Stoppage in transitu.

45—47. = V. § 48—50, except: throughout "or custodier" is omitted. — E. § 44—46; V. 48—50; T. 48—50; S. A. 43—45; Q. 45—47; W. A. 43—45. — Cp. Bankruptcy Act, 1908, § 99—100. In re Daley, Ex parte The Official Assignee, 19 L. R. (N. Z.) 379.

Re-sale by buyer or seller.

48—49. = V. § 50—52.

Part V. Actions for Breach of the Contract. Remedies of the seller.

50—51. = V. § 53—54.

Remedies of the buyer.

52. = V. § 55. — E. § 51; V. 55; T. 55; S. A. 50; Q. 52; W. A. 50. — Even where no market price can be proved substantial damages may be recovered for non-delivery of chattels. — Willis v. Marshall & Copeland, L. R. 1 S. C. (N. Z.) 28. Where there is no market price the measure of damages, in the case of the purchase of raw materials by a manufacturer, is the value of the raw materials to such manufacturer, and not the entire profit which would have been made by its subsequent manufacture. — Richardson v. Reid, 8 L. R. (N. Z.) 760. See also Fleming & Gilkison v. Grigg, 14 L. R. (N. Z.) 499; Dalgety & Co., Ltd. v. Latter, 21 L. R. (N. Z.) 604.

53. = V. § 56, except: throughout "or decree" is omitted.

54. = V. § 57. — E. § 53; V. 57; T. 57; S. A. 52; Q. 54; W. A. 52. — Where there is a breach of warranty the purchaser may refuse to accept a bill of exchange drawn upon him by the vendor for the full amount of the contract price. — Thompson v. Gilmour, L. R. 2 S. C. (N. Z.) 226. If a breach of warranty has been set up in diminution of price in an action for the price of the goods, and a decision has been given that there was no breach of warranty, the buyer is estopped from setting up the same breach of warranty in a subsequent action for damages, whether general or special. — Creaven v. Miller, 18 L. R. (N. Z.) 65.

55. = V. § 58. — E. § 54; V. 58; T. 58; S. A. 53; Q. 55; W. A. 53. — It is a reasonable assumption that on the sale of sheep to a sheep dealer for forward delivery the seller knows that they are bought for the purpose of re-sale, and in the event of the vendor failing to deliver, and of there being no market in which the buyer can readily obtain them, then, whether the seller did or did not know of any particular subcontract existing or contemplated, the inference is that the vendor contracts to be liable for the increased damages which will flow from a breach of the contract under the special circumstances. — Dalgety & Co., Ltd. v. Latter, 21 L. R. (N. Z.) 604.

Part VI. Supplementary.

56. = V. § 59. — E. § 55; V. 59; T. 59; S. A. 54; Q. 56; W. A. 53. — A custom of Auckland relating to sales of wool sustained in Langley v. Colbeck & Co., 14 L. R. (N. Z.) 540.

57—58. = V. § 60—61.

59. = V. § 62, except: subsections 4. and 5. are combined in subsection 4. — E. § 58; V. 62; T. 62; S. A. 57; Q. 59; W. A. 57. — Cp. O'Brien v. Barker, 4 J. R. N. S. S. C. (N. Z.) 62.

Savings. 60. 1. The rules in bankruptcy relating to contracts of sale shall continue to apply thereto, notwithstanding anything in this Act. 2. The rules of the common law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to contracts for the sale of goods. 3. The provisions of this Act relating to contracts of sale do not apply to any transaction in the form of a contract of sale which is intended to operate by way of mortgage, pledge, charge, or other security. 4. Nothing in this Act shall affect the enactments in force relating to chattels transfer, or any enactment in force relating to the sale of goods. — E. § 61; V. 5; T. 5; S. A. 59; Q. 5; W. A. 58.

Schedule.

Enactments consolidated.

1890, No. 11. The Mercantile Agents Act, 1890: Section 10 and 11.
1895, No. 23. The Sale of Goods Act, 1895.

Secret Commissions Act.

No. 40 of 1910. An Act for the Prohibition of Secret Commissions (3d December, 1910).¹⁾

Short title and commencement. 1. This Act may be cited as the *Secret Commissions Act, 1910*, and shall come into operation on the first day of January, nineteen hundred and eleven. — E. § 4; C. 1; V. 1; T. 1; S. A. 1; W. A. 1.

Interpretation. 2. In this Act, unless a contrary intention appears: "Agent" includes any person who is or has been, or desires or intends to be, employed by or acting for any other person, whether as agent, servant, broker, auctioneer, architect, solicitor, director, or in any other capacity whatever, either alone or jointly with any other person; "Principal" includes any person by whom an agent is or has been, or intends or desires to be, employed, or for whom an agent acts or has acted, or intends or desires to act; "Consideration" means valuable consideration of any kind; and particularly includes discounts, commissions, rebates, bonuses, deductions, percentages, employment, payment of money (whether by way of loan, gift, or otherwise howsoever), and forbearance to demand any money or valuable thing. — E. § 1; C. 23; V. 18; T. 20; S. A. 2; W. A. 20.

Gifts to agent without consent of principal an offence. 3. 1. Every person is guilty of an offence who corruptly gives, or agrees or offers to give, to any agent any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business (whether such act is within the scope of the agent's authority or the course of his employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business. 2. Any gift or other consideration given or offered or agreed to be given to any parent, husband, wife, or child, of any agent, or to his partner, clerk, or servant, or (at the agent's request or suggestion) to any other person, shall be deemed for the purposes of this section to have been given or offered or agreed to be given to the agent. — E. § 1; C. 2; V. 23; T. 34; S. A. 35; W. A. 2.

Acceptance of such gifts by agent an offence. 4. 1. Every agent is guilty of an offence who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, or solicits from any person, for himself or for any other person, any gift or other consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the principal's affairs or business (whether such act is within the scope of the agent's authority or the course of his employment as agent or not), or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business. 2. Every agent who diverts, obstructs, or interferes with the proper course of the affairs or business of his principal, or fails to use due diligence in the prosecution of such affairs or business, with intent to obtain for himself or for any other person any gift or other consideration from any person interested in such affairs or business, shall be deemed to have corruptly solicited a consideration within the meaning of this section. — E. § 1; C. 2; V. 2; T. 3; S. A. 4; W. A. 3.

Duty of agent to disclose pecuniary interest in contract. 5. 1. Every agent is guilty of an offence who makes a contract on behalf of his principal and fails to disclose to his principal, at the time of making the contract or as soon as possible thereafter, the existence of any pecuniary interest which the agent has in the making of the contract, unless to the knowledge of the agent the existence of such pecuniary interest is already known to his principal. 2. For the purposes of this section any pecuniary interest which a parent, husband, wife, child, or partner of the agent has in the making of the contract shall be deemed to be the pecuniary interest of the agent, unless he proves that he had no knowledge of that interest at the time when he made the contract. 3. For the purposes of this section an agent shall not be deemed to have any pecuniary interest in the making of a contract by reason merely of the fact that he or any person mentioned in the last preceding subsection is a shareholder in an incorporated company having more than twenty members.

¹⁾ The English Act (E.) cited is the *Prevention of Corruption Act, 1906* (6 Edw. 7, c. 34). The Australian Acts are given *supra*.

Giving false receipt, invoice, etc., to agent an offence. 6. Every person is guilty of an offence who, with intent to deceive the principal, gives to any agent, or signs or otherwise authenticates for the use of any agent, any receipt, invoice, account or other document of any nature whatsoever in relation to the affairs or business of the agent or his principal which contains any statement which is false, defective, or misleading in any material particular, or which omits to state explicitly and fully the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given, or allowed, or agreed to be made, given, or allowed, in relation to the matters referred to in that document. — E. § 1 (1); C. 5; V. 4; T. 5; S. A. 6; W. A. 5.

Delivery of false receipt, etc., to principal an offence. 7. Every agent is guilty of an offence who delivers or presents to his principal any receipt, invoice, account, or other document of any nature whatsoever in relation to the business or affairs of his principal which to the knowledge of the agent is false or defective in any material particular, or is in any way likely to mislead the principal, or which to the knowledge of the agent omits to state the fact of any commission, percentage, bonus, discount, rebate, repayment, gratuity, or deduction having been made, given or allowed, or agreed to be made, given, or allowed, in relation to the matters referred to in that document, or which to the knowledge of the agent omits to disclose the fact of any gift or other consideration having been received by or promised to the agent in respect of those matters, unless in any such case the fact which is not disclosed is, to the knowledge of the agent, already known to the principal at the time when the said document is so delivered or presented to him.

Receiving secret reward for procuring contracts an offence. 8. 1. Every person is guilty of an offence who advises any person to enter into a contract with a third person and receives or agrees to receive from that third person, without the knowledge and consent of the person so advised, any gift or consideration as an inducement or reward for the giving of that advice or the procuring of that contract, unless the person giving that advice himself acts as the agent of the third person in entering into the contract, or is to the knowledge of the person so advised the agent of that third person. 2. For the purposes of this section a person shall be deemed to advise another person to enter into a contract if he makes to that other person any statement or suggestion with intent to induce him to enter into the contract. — V. 1 (2); T. 6; S. A. 7; W. A. 6.

Aiding and abetting offences. 9. Every person is guilty of an offence who aids, abets, counsels, or procures, or is in any way directly or indirectly knowingly concerned in or privy to the commission of any offence against this Act, or the commission outside New Zealand of any act in relation to the affairs or business of a principal residing or carrying on business in New Zealand which if committed in New Zealand would be an offence against this Act. — C. 10; V. 7; T. 9; S. A. 10; W. A. 9.

Offences by persons acting on behalf of agents. 10. Every person is guilty of an offence who, with or without authority, does on behalf of any other person who is an agent any act which if done by that agent himself would be an offence against this Act. — V. 7; T. 9; S. A. 10; W. A. 9.

Except as provided in this section, customary nature of gift no defence. 11. 1. Nothing in this Act contained shall be deemed to prohibit or render illegal any recognized practice or usage of any trade or calling existing at the time of the passing of this Act if the Court before which the matter of such practice or usage is in question shall be satisfied that such practice or usage is honest and reasonable; and, in so determining, the said Court may have regard to the circumstance that the commissions, rebates, or allowances paid or made by the third party to the agent under such practice or usage were prior to this Act lawfully receivable by the agent without any breach of his duty towards his principal; or the circumstance that the said commissions, rebates, or allowances so paid or made would not in any case be paid or allowed by such third party to the principal; or the circumstance that the same were paid or allowed in respect of services lawfully rendered by the agent to such third party without injury or loss to the principal and without any breach by the agent of his duty toward his principal. 2. Except as provided by this section, evidence shall not be admissible in any proceeding for an offence against this Act to show that any such gift or consideration as is mentioned in this Act is customary in any trade or calling, nor shall the customary nature of any such gift or consideration be any defence in such proceedings. — Cp. C. 9; V. 13; T. 15; S. A. 14; W. A. 15.

Consent of Attorney-General necessary for prosecution. 12. 1. No prosecution for an offence against this Act shall be commenced without the leave of the Attorney-

General; and the Attorney-General shall, in granting leave to institute a prosecution, determine whether the offence shall be dealt with as an indictable offence or as one punishable on summary conviction, and the prosecution shall take place accordingly and not otherwise. 2. The leave of the Attorney-General may be granted without notice to the defendant, and it shall not be necessary in any information or indictment to state that such leave has been granted, or the terms thereof. Objections to an information or indictment for want of such leave or for want of conformity to the terms thereof shall be taken before the Magistrate, or by motion to quash the indictment, before the defendant is given in charge to the jury upon his trial, and not otherwise; and if the Magistrate or Judge is satisfied that such leave has not been granted, or that the terms thereof have not been conformed to, the information or indictment shall be dismissed or quashed, as the case may be. — E. § 2 (1); V. 16; T. 18; S. A. 19; W. A. 18.

Penalty on conviction. 13. 1. Any person convicted on indictment of an offence against this Act is liable, if a corporation, to a fine not exceeding one thousand pounds; and if any other person, to imprisonment with or without hard labour for any period not exceeding two years or to a fine not exceeding five hundred pounds. 2. Any person convicted summarily of an offence against this Act is liable, if a corporation, to a fine not exceeding one hundred pounds; and if any other person, to imprisonment with or without hard labour for any period not exceeding three months or to a fine not exceeding fifty pounds. — E. § 1 (1); C. 4 (1); V. 9; T. 11; S. A. 12; W. A. 11.

Proceedings to be before Magistrate only. 14. An information under the *Justices of the Peace Act, 1908*, for an offence against this Act, whether the proceedings are by way of summary conviction or otherwise, shall be taken and heard before a Magistrate only.

Incriminating answers and discovery. 15. No person shall in any civil or criminal proceedings be excused from answering any question put either viva voce or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may criminate or tend to criminate him in respect of an offence against this Act; but his answer shall not be admissible in evidence against him in any criminal proceedings for an offence against this Act. — V. 11; T. 13; S. A. 14; W. A. 13.

Persons deemed to be agents within the meaning of this Act. 16. 1. For the purposes of this Act: a) Every officer of a corporation and every member of a governing body of a corporation shall be deemed to be an agent of the corporation; b) Every officer or member of any local authority, board, council, committee, or other body of persons, whether incorporated or unincorporated, charged by statute with any public functions shall be deemed to be an agent of that local authority, board, council, committee, or other body; c) Every person in the service of the Crown, or acting for or on behalf of the Crown, or holding any office in the public service, shall be deemed to be an agent of the Crown; d) Every partner in a firm shall be deemed to be an agent of the firm; e) An executor, administrator, or trustee shall be deemed to be an agent of the beneficiaries under the will, intestacy, or trust; f) The committee of the estate of a person of unsound mind shall be deemed to be the agent of that person; g) An arbitrator, umpire, or valuer shall be deemed to be an agent of every party to the arbitration or valuation; h) A liquidator of a company shall be deemed to be an agent of the company. 2. If by virtue of the provisions of this Act any agent is deemed to be the agent of two or more principals in respect of the same matter, this Act shall apply to each of those principals in the same manner as if he was the sole principal. 3. Nothing in this section shall be so construed as to restrict in any manner the meaning of the terms "agent" or "principal" as used in this Act. — See note to § 2.

Bills of Exchange Act.

No. 15 of 1908. An Act to consolidate certain Enactments of the General Assembly relating to Bills of Exchange.¹⁾

Short title. Enactments consolidated. 1. 1. The short title of this Act is *The Bills of Exchange Act, 1908*. 2. This Act is a consolidation of the enactments men-

¹⁾ The references in the notes, unless otherwise indicated, are to (E.) the English *Bills of Exchange Act, 1882*, and to the Commonwealth Act reprinted *supra*.

tioned in the first Schedule hereto. 3. This Act is divided into Parts, as follows: Part I. Bills of Exchange. (Sections 3 to 72.) Part II. Cheques on a Bank. (Sections 73 to 83.) Part III. Promissory Notes. (Sections 84 to 90.) Part IV. Miscellaneous. (Sections 91 to 98.)

Interpretation of terms. 2. In this Act, if not inconsistent with the context: "Acceptance" means an acceptance completed by delivery or notice. "Action" includes counter claim and set-off. "Banker" includes a body of persons, whether incorporated or not, who carry on the business of banking. "Bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy. "Bearer" means the person in possession of a bill or note payable to bearer. "Bill" means bill of exchange, and "note" means promissory note. "Delivery" means transfer of possession, actual or constructive, from one person to another. "Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof. "Indorsement" means an indorsement completed by delivery. "Issue" means the first delivery of a bill or note, complete in form, to a person who takes it as a holder. "Value" means valuable consideration. — E. § 2; C. 4.

Part I. Bills of Exchange. Form and interpretation.

3. = C. § 8, except: in (4) "or" is inserted before (c). — No right of action can be founded upon a contemporaneous oral agreement qualifying the terms of the contract evidenced by a bill of exchange. — *Cornish v. Bank of New South Wales*, Mac. (N. Z.) 181. The words "amount of enclosed account assigned to me by A. B." inserted in a bill of exchange are merely a statement of the transaction that gives rise to the bill, and do not affect its quality as a negotiable instrument. — *Ashcroft & Co. v. Denniston*, 6 L. R. (N. Z.) 432. An instrument in the following form is a good bill of exchange: "Gisborne, New Zealand, 11th June, 1908. Dr. Williams, Gisborne. Dear Sir, — Please pay to Messrs. H. J. Peacocke & Co. the sum of one hundred and fifty pounds (£ 150), and deduct same from moneys due to me on account of contract for Mrs. William's residence, Whataupoko. W. Crump." — *Peacocke & Co. v. Williams*, 28 L. R. (N. Z.) 354.

Inland and foreign bills. 4. 1. An inland bill is a bill that is, or on the face of it purports to be, a) Both drawn and payable in any of the Australasian Colonies; or b) Drawn in any of the Australasian Colonies upon some person resident therein. Any other bill is a foreign bill. 2. Unless the contrary appear on the face of the bill the holder may treat it as an inland bill. — E. § 4; C. 9.

5—6. = C. §§ 10—11.

7. = C. § 12, except: "it may be made payable" is omitted; "or" is substituted for "a bill may also be made payable".

8. = C. § 13, except: the beginning word is "where" instead of "when"; in 1. "it is not transferable" is substituted for "it should not be transferable"; in 3. "if it is expressed" is substituted for "which is expressed" and "if the only or the last indorsement thereon" for "on which the only or last endorsement"; in 4. "if it is expressed" is substituted for "which is expressed" in both instances, and "is not transferable" for "should not be transferable".

9. = C. § 14, except: in 3. "provides otherwise" is substituted for "otherwise provides".

10. = C. § 15, except: in 1. "if no time" is substituted for "in which no time".

11. = C. § 16, except: "if it is expressed" is substituted for "which is expressed" and "specified event that" for "specified event which"; "or" is omitted before (b).

12. = C. § 17, except: "it shall not be avoided by the insertion of a wrong date" is substituted for "the bill shall not be avoided thereby".

13. = C. § 18, except: "is proved" is substituted for "be proved". — E. § 13; C. 18. — A bank is not entitled to pay a post-dated cheque before its date, and charge the amount to the customer's account. Nor may it treat the cheque as a bill presented for acceptance and retain the customer's funds to meet it. Where, therefore, a bank paid a post-dated cheque before its date, and then dishonoured another cheque of the customer (presented before the date of the post-dated one) on the ground that after payment of the post-dated cheque there were not sufficient funds to meet the other, it was *held*, that the customer was entitled to recover damages for the dishonour. In the case of an intentional post-dating the post-date can not be regarded as a wrong date, within the meaning of section 12. — *Pollock v. Bank of New Zealand*, 20 L. R. (N. Z.) 174. The New Zealand Court of Appeals expressly declined to follow the decision of the Queensland Court in *McGill v. Bank of North Queensland*, 6 Q. L. J. 262.

Computation of time of payment. 14. Where a bill is not payable on demand the day on which it falls due is determined as follows: a) Three days, called days

of grace, are, in every case where the bill itself does not provide otherwise, added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace. i) When the last day of grace falls on Sunday, the bill is, except in the case mentioned in the next succeeding subparagraph, due and payable on the preceding business day. ii) When the last day of grace is a bank holiday under *The Banking Act, 1908*, or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day. (b—d) = C. § 19 (b—d), except: in c) “is noted” is substituted for “be noted”. — E. § 14; C. 19.

15. = C. § 20, except: “he thinks fit” is substituted for “he may think fit”.

16. = C. § 21.

17. = C. § 22, except: in 2 b “state” is substituted for “express”.

18. = C. § 23, except: in 2. (= N. Z. subs. 2) the beginning word is “where” instead of “when”, and “on the date of its first presentment” is substituted for “of the date of first presentment”.

19. = C. § 24, except: “or” is omitted before each subsection; 4. is part of (c).

20. = C. § 25 (1—3), except: in 1. “stamped with an impress stamp” is omitted. — E. § 20; C. § 25. — A promissory note payable “. . . months after date” is not payable on demand, and can not be sued on in its inchoate state. *Semble*, the holder before bringing suit might have filled in the blank. — *Colonial Bank of New Zealand v. Spence*, L. R. 2 S. C. (N. Z.) 78. Where a promissory note in favour of certain payees or order is indorsed by a third person with the intention of guaranteeing the payment when due, and then signed by the makers and handed by them in that condition to the payees, the latter have authority under this section to complete the instrument by indorsing it above the indorsement of the guarantor, and can sue the guarantor upon the note, in the event of non-payment by the makers. — *Erikssen v. Bunting*, 20 L. R. (N. Z.) 388.

21. = C. § 26, except: in 1. “is the drawer’s” is substituted for “be the drawer’s”; in 2. “the holder” is substituted for “a holder”, and “if the bill is” for “but if the bill be”; “or” is omitted before 2 (b); in 3. (= N. Z. subs. 4) “a” is omitted before “drawer”.

Capacity and authority of parties.

22. = C. § 27, except: in 1. “a” is inserted before “drawer”; in 2. “by a minor or corporation” is substituted for “by an infant, minor, or corporation”. — E. § 22; C. 27. — In order to support a plea of intoxication as a defence to an action on a negotiable instrument in the hands of a person with notice, it must appear that when the defendant signed the instrument he was incapable of forming a rational judgment of what he was doing. — *Goodison v. Sutton*, L. R. 1 S. C. (N. Z.) 389. Infancy is a good defence to an action on a promissory note not given for necessities. — *Matheson v. Aitken*, 7 L. R. (N. Z.) 94.

23. = C. § 28, except: “unless he has signed” is substituted for “who has not signed”; “and” is omitted before (b).

24. = C. § 29, except: “is” is inserted before “placed thereon”; “provided that” is omitted before “nothing in this section”.

25. = C. § 30, except: “bound by such signature only” is substituted for “only bound by such signature”.

26. = C. § 31. — E. § 26; C. 31. — Where directors of a company sign a note drawn in a form which would make them personally liable, but the payees are aware that the note is given on behalf of the company, in a suit by the payees against the directors the defendants may avail themselves of the equitable defence of mistake, and escape personal liability. — *National Bank of New Zealand v. Bacon*, L. R. 2 S. C. (N. Z.) 33.

The consideration for a bill.

27. = C. § 32, except: in 3. “amount of the sum” is substituted for “extent of the sum”. — E. § 27; C. 32. — A person in possession of a bill for the purpose of collection can sue the acceptor upon it, and it is no defence to the action that the plaintiff gave no consideration for it. — *Bank of New Zealand v. Bird*, Mac. (N. Z.) 381.

28. = C. § 33. — E. § 28; C. 33. — *Cp. Burns v. Otago & Southland Investment Co., Ltd.*, 2 C. A. (N. Z.) 527.

29. = C. § 34, except: “or” omitted before 1. b) — E. § 29; C. 34. — A holder for value and without notice of a cheque given in payment of a wager which is void only and not illegal may sue the maker, notwithstanding that he knew when he took it that it had been dishonoured and was a stale cheque. — *Pollock v. Paterson & Co.*, 19 L. R. (N. Z.) 94. For a case where on the facts the plaintiff was not considered a holder in due course of a cheque given in payment of a wager, see *Jones v. Hilton*, 25 L. R. (N. Z.) 494. Where a note is negotiated and delivered to the payee through the fraud of the maker’s agent, the maker may nevertheless be bound. — *Grant v. Harty*, 6 L. R. (N. Z.) 444.

30. = C. § 35. — E. § 30; C. 35. — The onus which is cast by this section upon the holder of a bill affected with fraud of proving that subsequently to the fraud value has been

given in good faith, is not discharged by merely showing that value has been really given with the intention of really acquiring the note (and not merely collusively, to enable it to be sued upon), but the holder must go on to show affirmatively that the instrument was taken "in good faith" in the ordinary sense of that term. *Semble*, that where a promissory note intended to be given to a third person is drawn by the maker to the order of the proposed indorser, handed by the maker to the indorser for indorsement, and indorsed and handed back by the indorser to the maker, the handing of it to the indorser for indorsement is its issue, and the indorsement and handing of it back to the maker is a negotiation, within the meaning of subsection (2) of this section. — *Harris v. Aldous*, 18 L. R. (N. Z.) 449.

Negotiation of bills.

31. = C. § 36.

32. = C. § 37, except: in 1. "provided that" is inserted before "an indorsement", and "shall be deemed" is substituted for "is deemed"; in 2. "that purports" is substituted for "which purports" and "which purports" is omitted before "to transfer the bill"; in 4. "thinks fit" is substituted for "think fit"; in 6. "either special or in blank" is substituted for "made in blank or special".

33. = C. § 38. — E. § 33; C. 38. — Where a bill is indorsed subject to an agreement that the indorsee shall apply the proceeds in a particular way, and the indorsee fails to do to, the misapplication of the proceeds is no defence to an action on the bill brought by the indorsee against the indorser. The breach of such an agreement is only ground for a cross-action against the indorsee. — *Bank of Australasia v. Ehrenfried*, Mac. (N. Z.) 439.

34. = C. § 39, except: in 4. the beginning word is "where" instead of "when".

35. = C. § 40, except: in 1. "is indorsed" is substituted for "be indorsed"; in 2. "expressly authorises" is substituted for "expressly authorise".

36. = C. § 41, except: in 1. "either" is inserted before "respectively indorsed"; in 2. "it can be negotiated only" is substituted for "it can only be negotiated"; in 4. "became overdue" is substituted for "was overdue"; in 5. "that is not overdue" is substituted for "which is not overdue".

37—38. = C. §§ 42—43.

General duties of the holder.

39. = C. § 44.

40. = C. § 45, except: in 2. "if he does not" is substituted for "if he do not".

41. = C. § 46, except: in 1. "if it is presented" is substituted for "which is presented"; in 1. b) "in which case presentment" is substituted for "then presentment"; in 1. c) "executor or administrator" is substituted for "personal representative"; in 1. d) "or assignee" is omitted.

42. = C. § 47, except: the beginning word is "where" instead of "when"; "if he does not" is substituted for "if he do not".

43. = C. § 48, except: in 1. the beginning word is "where" instead of "when". — E. § 43; C. 48. — A refusal to accept made by a person actually managing the affairs of a company is sufficient evidence of refusal to accept by the company. — *Ashcroft v. Deniston*, 6 L. R. (N. Z.) 432.

44. = C. § 49, except: in 1. "general acceptance" is substituted for "unqualified acceptance"; in 3. the beginning word is "where" instead of "when".

45. = C. § 50, except: "if it is not" is substituted for "if it be not"; "if it is presented" is substituted for "which is presented"; in 3. "by the exercise" is substituted for "with the exercise" and "as hereinafter defined" for "as defined in this section"; 4. d) reads as follows: "In any other case, if presented to the drawee or acceptor at his last known place of business or residence, or wherever he can be found"; 7. reads as follows: "Where the drawee or acceptor of the bill is dead, and no place of payment is specified, presentment must be made to the executor or administrator of the deceased, if any, and if by the exercise of reasonable diligence he can be found"; in 8. "a" is omitted before "presentment".

46. = C. § 51, except: in 2. d) "reason to believe" is substituted for "reason to expect".

47. = C. § 52, except: in 1. the beginning word of each subsection is "where" instead of "when"; in 2. "where a bill" is substituted for "when a bill".

48. = C. § 53, except: "provisions of this Act where" is substituted for "provisions of this Act when".

Rules as to notice of dishonour. 49. Notice of dishonour in order to be valid and effectual must be given in accordance with the following rules: a) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill; b) Notice of dishonour may

be given by an agent either in his own name, or in the name of any party entitled to give notice, whether that party is his principal or not; c) Where the notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior indorsers having a right of recourse against the party to whom it is given; d) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it enures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given; e) The notice may be given either in writing or by personal communication, and may be given in any terms sufficient to identify the bill, and intimating that the bill has been dishonoured by non-acceptance or non-payment; f) The return of a dishonoured bill to the drawer or an indorser is in point of form deemed a sufficient notice of dishonour; g) A written notice need not be signed, and an insufficient written notice may be supplemented and made valid by verbal communication; h) A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby; i) Where notice of dishonour is required to be given to any person, it may be given either to the party himself or to his agent in that behalf; j) Where the drawer or indorser is dead, and the party giving notice is aware of the fact, the notice must be given to an executor or administrator of the deceased, if any, and if by the exercise of reasonable diligence he can be found; k) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to his assignee; l) Where there are more than two drawers or indorsers, who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice on behalf of the others; m) The notice may be given as soon as the bill is dishonoured, and must be given within a reasonable time thereafter; n) In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless i) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonour of the bill; ii) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonour of the bill, if there is a post at a convenient hour on that day, and, if there is no such post on that day, then by the next post thereafter; o) Where a bill when dishonoured is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he gives notice to his principal, he must do so within the same time as if he were the holder; and the principal, upon receipt of such notice, has himself the same time for giving notice as if the agent had been an independent holder; p) Where a party to a bill receives due notice of dishonour, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonour; q) Where a notice of dishonour is duly addressed and posted, the sender is deemed to have given due notice of dishonour notwithstanding any miscarriage by the post-office. — E. § 49; C. 54. — Where a person resides in a place where there is no postal delivery it is sufficient if notice of dishonour be sent to him addressed to the post office nearest to his residence, without other address. — *Walker v. McLaren*, L. R. 2 S. C. (N. Z.) 150; s. v. L. R. 2 C. A. (N. Z.) 262. Merely taking a note, both before and after dishonour, to an indorser, showing it, and demanding payment, to which the indorser answers that he has no instructions, may not be a sufficient notice of dishonour. — *MacFarlane v. Kinross & Graham*, L. R. 3 S. C. (N. Z.) 196. See also *Bank of New Zealand v. Proudfoot*, L. R. 3 S. C. (N. Z.) 372. As to proof of date of posting notice of dishonour, see *Kelly v. Alley*, 8 N. Z. Gaz. L. R. 427. As to what is an insufficient address in the posting of a notice of dishonour, see *Henry v. Bolstad*, 8 N. Z. Gaz. L. R. 716. For a case where it was held that due diligence to ascertain an address had not been used, see *Abraham v. Campbell*, 28 L. R. (N. Z.) 91.

50. = C. § 55, except: 2. b) reads as follows: "by waiver express or implied, either before the time of giving notice of dishonour has arrived, or after the omission to give due notice"; in 2. d) 3. "and made for his accommodation" is substituted or "or made for his accommodation". — E. § 50; C. 55. — Where the indorser and indorsee of a note have, before its due date, agreed to release the maker, notice of dishonour by such indorsee to the indorser is not necessary. — *Reid v. Tustin*, 13 L. R. (N. Z.) 745. An indorser of a note, who before it becomes due, upon learning of the bankruptcy of the maker, informs the holder that he (the indorser) "will have to provide for note", does not thereby as a matter of law waive his right to notice of dishonour. — *Wiggins v. Bellve*, 15 L. R. (N. Z.) 540.

Noting or protest of bill. 51. 1. Where an inland bill has been dishonoured it may, if the owner thinks fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order

to preserve the recourse against the drawer or indorser. 2. Where a foreign bill, appearing on the face of it to be such, has been dishonoured by non-acceptance it must be duly protested for non-acceptance, and where such a bill, not having been previously dishonoured by non-acceptance, is dishonoured by non-payment, it must be duly protested for non-payment, otherwise the drawer and indorsers are discharged. 3. Where a bill does not appear on the face of it to be a foreign bill, protest thereof as in case of dishonour is unnecessary. 4. A bill that has been protested for non-acceptance may be subsequently protested for non-payment. 5. Subject to the provisions of this Act, where a bill is noted or protested it must be noted on the day of dishonour. 6. Where a bill has been duly noted, the protest may be subsequently extended so as to take effect from the date of the noting. 7. Where the acceptor of a bill becomes bankrupt or insolvent or suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. 8. A bill must be protested at the place where it is dishonoured. Provided that: a) Where a bill is presented through the post-office, and returned by post dishonoured, it may be protested at the place to which it is returned and on the day of its return if received during business hours, and, if not received during business hours, then not later than the next business day; and b) When a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonoured by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to or demand on the drawee is necessary. 9. A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify: a) The person at whose request the bill is protested; b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found. 10. Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or on written particulars thereof. 11. Protest is dispensed with by any circumstance that would dispense with notice of dishonour. 12. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence. — E. § 51; C. 56.

52. = C. § 57, except: in 4. the beginning word is “when” instead of “where”.

Liabilities of parties.

53. = C. § 58.

54. = C. § 59, except: “and” is omitted before each subsection and paragraph.

55. = C. § 60, except: in 1. a) “presentation” is substituted for “presentment”; “and” is omitted before each subsection. — E. § 55; C. 60. — The indorser of a promissory note is liable on his indorsement even where the note has not been indorsed to him by the payee. — Cook v. Fenton, 11 L. R. (N. Z.) 505.

56. = C. § 61.

57. = C. § 62, except: in 2. “bill that has” is substituted for “bill which has”; in 3. “justice requires” is substituted for “justice require”. — E. § 57; C. 62. — Interest on a bill of exchange being in the nature of damages, the amount of interest recoverable must be assessed by a jury, except where judgment goes by default. — Calcutt v. Binney, O. B. & F. (C. A.) (N. Z.) 127. See also Brown v. Bennett, 9 L. R. (N. Z.) 487. Where there had been long delay in enforcing payment, and there were other circumstances which might fairly have led the defendant to suppose that the plaintiff did not intend to claim payment, interest on overdue bills of exchange was not allowed. — Spaethe v. Anderson, 18 L. R. (N. Z.) 149.

58. = C. § 63.

Discharge of bill.

59. = C. § 64, except: 1. reads as follows: “A bill is discharged by payment in due course by or on behalf of the drawee or acceptor. ‘Payment in due course’ means payment to the holder of the bill made at or after the maturity thereof in good faith and without notice that the holder’s title is defective”; in 2. b) “and may” is substituted for “and he may”. — E. § 59; C. 64. — As to agreements for renewal of notes, see MacFarlane v. Kinross & Graham, L. R. 3 S. C. (N. Z.) 196; Walker & Greenwodd v. Johnson, 6 L. R. (N. Z.) 41. As to novation by the giving of a new note, see Cruickshank v. Ewington, 24 L. R. (N. Z.) 957.

Banker paying on demand draft bearing forged indorsement. Branch banks deemed independent banks for certain purposes. 60. 1. Where a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority. 2. Where a banker carries on the business of banking at more branches than one he shall, for the purposes of this section, be deemed to be an independent banker in respect of each of such branches, and a draft issued by one of such branches and payable at another shall be deemed to be a bill. — E. § 60; C. 65.

Where acceptor the holder at maturity. 61. Where the acceptor of a bill is or becomes the holder of it in his own right, at or after its maturity, the bill is discharged.

62. = C. § 67, except: in 1. the beginning word is "where" instead of "when"; in 2. "but" is omitted; "any such renunciation" is substituted for "the renunciation".

63. = C. § 68, except: 2. reads as follows: "Any party liable on a bill may in like manner be discharged by the intentional cancellation of his signature by the holder or his agent. In such case an indorser who would have had a right of recourse against the party whose signature has been cancelled is also discharged".

64. = C. § 69. — E. § 64; C. 69. — The striking out of a memorandum on the back of a promissory note that the note was to be renewed, without the authority of the makers, is a material alteration, and avoids the note. But the alteration of a memorandum of the place of payment written in the margin does not avoid the note, such memorandum not being a part of the note. — *Fulton v. McCardle*, 6 L. R. (N. Z.) 365. A finding by the jury that but for the plaintiff's want of care he would have discovered that alterations had been made in the bill he was taking may be equivalent to a finding that the alterations were "apparent" within the meaning of this section. — *Brown v. Bennett*, 9 L. R. (N. Z.) 432. Except in the case of banker and customer, there is no duty on the part of the drawer of a bill of exchange or the maker of a promissory note to use care in framing it so that fraudulent alterations are rendered more difficult. The failure to use such care is not such negligence as will estop the drawer or maker from setting up the defence that the instrument has been avoided by reason of the material alterations. — *Brown v. Bennett*, 9 L. R. (N. Z.) 487. See also *Marshall v. Colonial Bank of Australia*, (1906) A. C. 559, discussed in the note to the Commonwealth Bills of Exchange Act, § 69.

Acceptance and payment for honour.

65. = C. § 70, except: in 1. "on whose account" is substituted for "for whose account"; in 3. a) "and" is inserted before "be signed".

66. = C. § 71, except: in 1. "provided that it" is substituted for "provided it".

67. = C. § 72, except: in 2. "for presentment to him not later than the day following its maturity" is substituted for "not later than the day following its maturity for presentment to him"; in 3. "circumstance that" is substituted for "circumstance which"; in 4. the beginning word is "where" instead of "when".

68. = C. § 73, except: in 3. "may" is inserted before "form"; in 6. "and if the holder does" is substituted for "if the holder do".

69. = C. § 74. — E. § 69; C. 74. — See *Sargood v. Mackintosh*, Mac. (N. Z.) 790.

Action on lost bill. 70. In any action or proceeding upon a bill, the Court or a Judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the Court or Judge against the claims of any other person upon the instrument in question. — E. § 70; C. 75.

71. = C. § 76, except: in 4. "on every part" is substituted for "on every such part"; in 5. "where" is substituted for "when".

Conflict of laws.

Law governing contracts contained in a bill. 72. Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties thereto are determined as follows: a) The validity of a bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance *supra* protest, is in each case determined by the law of the place where the contract was made: Provided that i) Where a bill is issued out of New Zealand it is not invalid by reason only that it is not

stamped in accordance with the law of the place of issue; ii) Where a bill issued out of New Zealand conforms, as regards requisities¹⁾ in form, to the law of New Zealand, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in New Zealand; b) Subject to the provisions of this Act, the interpretation of the drawing, indorsement, acceptance, or acceptance *suprà* protest, of a bill is determined by the law of the place where such contract was made: Provided that where an inland bill is indorsed in a foreign country the indorsement shall, as regards the payer, be interpreted according to the law of New Zealand; c) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured; d) Where a bill is drawn out of but is payable in New Zealand and the sum payable is not expressed in the currency of New Zealand, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable; e) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable. — E. § 72; C. 77.

Part II. Cheques on a Bank.

73. = C. § 78.

74. = C. § 79, except: in 1. "At the time of such presentment" is substituted for "at the time at which presentment ought to have been made"; "reasonable time after" is substituted for "reasonable time of", and "between himself and the banker" for "between him and the banker"; in 3. "shall be" is inserted before "entitled".

75. = C. § 81, except: "drawn on it by a customer" is substituted for "drawn on him by his customer", and "bank" for "banker".

Crossed cheques.

76. = C. § 82, except: 1. a) reads as follows: The words "and company" or "bank", or any abbreviation thereof, between two parallel transverse lines, either with or without the words "not negotiable"; or.

77. = C. § 83, except: in 6. "the banker may cross it" is substituted for "he may cross it".

Crossing to be deemed a material part of cheque. 78. A crossing authorised by this Act is a material part of the cheque, and no person may obliterate or, except as authorised by this Act, add to or alter the crossing. — E. § 78; C. 84.

Duties of banker as to crossed cheques. 79. 1. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for collection being a banker, the banker on whom it is drawn shall refuse payment thereof. 2. Where the banker on whom a cheque so crossed is drawn nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid. 3. Where a cheque presented for payment does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, the banker paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorised by this Act, and of payment having been made otherwise than to a banker, or to the banker to whom the cheque is or was crossed, or to his agent for collection being a banker, as the case may be. — E. § 79; C. 85.

Protection to banker and drawer where cheque is crossed. 80. Where the banker on whom a crossed cheque is drawn pays it in good faith and without negligence, if crossed generally, to a banker, and, if crossed specially, to the banker to whom it is crossed, or to his agent for collection being a banker, the banker paying the cheque, and, if the cheque has come into the hands of the payee, the drawer, shall

¹⁾ *Sic*; obviously "requisites".

respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof. — E. § 80; C. 86.

Effect of the words “not negotiable”. 81. Where a person takes a crossed cheque bearing on it the words “Not negotiable”, he shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had. — E. § 81; C. 87.

Protection to collecting banker. Protection of banker where crossed cheque credited to or indorsed by customer before collection. 82. 1. Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment. 2. The protection afforded to a banker by the last preceding subsection shall also apply where a cheque as therein mentioned has in the ordinary course of business been credited to the account of a customer before it has been collected, and whether or not the customer has, before the cheque has been collected, drawn against the credit thereby established or indorsed the cheque. — E. § 82; C. 88.

Branch banks deemed independent banks for certain purposes. 83. Where a banker carries on the business of banking at more branches than one he shall, for the purposes of sections seventy-six to eighty-two hereof, be deemed to be an independent banker in respect of each of such branches. — E. 6 Edw. 7, c. 17 § 1.

Part III. Promissory Notes.

84. = C. § 89, except: in 4. “a note that” is substituted for “a note which”; “New Zealand” is substituted for “Australasia”.

85. = C. § 90, except: “inchoate and” is omitted. — E. § 84; C. 90. — See *Grant v. Harty*, 6 L. R. (N. Z.) 444.

86. = C. § 91.

87. = C. § 92, except: in 1. “is not” is substituted for “be not”; in 3. “purposes” is substituted for “purpose”.

88. = C. § 93, except: in 1. “but” is inserted before “in any other case”.

89. = C. § 94, except: “and” is omitted before (b).

90. = C. § 95, except: “of this Act” is inserted after “this Part”; “except as provided by this section” is substituted for “except as by this section provided”.

Part IV. Miscellaneous.

91. = C. § 96.

92. = C. § 97, except: 2. and 3. read as follows: “2. Where a corporation makes any instrument or writing required by this Act to be signed, it is sufficient if the instrument or writing is sealed with the corporate seal. 3. Nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.”

Computation of time. 93. Where by this Act the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. “Non-business” days for the purposes of this Act means a) Sunday; b) Good Friday, Christmas Day, and every other bank holiday under *The Banking Act, 1908*. Any other day is a business day. — E. § 92; C. 98.

94. = C. § 99, except: “to take effect from” is substituted for “as of”.

Protest when notary not accessible. 95. 1. Where a dishonoured bill or note is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonour of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill. 2. The form given in the second Schedule to this Act may be used with necessary modifications, and if used shall be sufficient. — E. § 94; C. 100.

Bill of exchange drawn at sight to be deemed a bill payable on demand. 96. Every bill of exchange or promissory note drawn and purporting to be payable at sight or on presentation shall be stamped as, and shall for all purposes be deemed to be a bill of exchange or promissory note payable on demand without any days of grace, any law or custom to the contrary notwithstanding.

Special provision in case of Maoris. 97. 1. No Maori shall be held liable on a bill or note not written in the Maori language unless the same has a translation in that language indorsed thereon, and also shows upon its face that it was duly interpreted to such Maori at the time of the making or acceptance thereof, and that he understood the liability for payment imposed thereby. 2. This section does not apply to cheques. 3. This section shall have force only within the North Island of New Zealand.

98. 1. = C. § 5 (2). 2. Nothing in this Act shall affect a) The provisions of *The Stamp Duties Act, 1908*, or any law or enactment for the time being in force relating to the revenue; b) The provisions of *The Companies Act, 1908*.

Schedules.

First Schedule. Enactments consolidated.

1883, No. 8. The Bills of Exchange Act, 1883.

1884, No. 28. The Bills of Exchange Act 1883 Amendment Act, 1884.

1905, No. 40. The Bills of Exchange Act Amendment Act, 1905.

Second Schedule. Protest where the services of a notary cannot be obtained.

Know all men that I, A. B. [householder], of _____, in New Zealand, at the request of C. D., there being no notary public available, did on the _____ day of _____, 19____, at _____, demand payment [or acceptance] of the bill of exchange hereunder written, from E. F., to which demand he made answer [*State answer, if any*]: wherefore I now, in the presence of G. H. and J. K., do protest the said bill of exchange.

(Signed) A. B. }
G. H. } Witnesses.
J. K. }

NB. The bill itself should be annexed, or a copy of the bill and all that written thereon should be underwritten.

Banking Act.

No. 11 of 1908. An Act to consolidate certain Enactments of the General Assembly relating to Banking.¹⁾

Short title. Enactments consolidated. Savings. 1. 1. The short title of this Act is *The Banking Act, 1908*. 2. This Act is a consolidation of the enactments mentioned in the first Schedule hereto, and with respect to those enactments the following provisions shall apply: a) All resolutions, certificates, notifications, and generally all acts of authority which originated under any of the said enactments, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated; b) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

Interpretation. 2. In this Act, if not inconsistent with the context: "Bank" means any person, partnership, corporation, or company carrying on in New Zealand the business of banking; "Bank-note" or "note" means the instrument commonly known as a bank-note, that is to say: a promissory note (in whatever form or by whomsoever drawn or made) issued by a bank and entitling or purporting to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment on demand of the sum named therein, not exceeding the sum for which the bank may lawfully issue any such note; "Charter" of a bank means the Act of Parliament, Royal charter, letters patent, deed of settlement, memorandum of association, or other instrument by or under which the bank is incorporated; and includes all amendments of such instrument, and also all articles of association,

¹⁾ The references in the notes are to the English Act indicated and to the Bank Holidays Acts of the Australian states reprinted *supra*.

by-laws, rules, and regulations providing for the administration and management of the bank; "Court" means the Court, Judge, Magistrate, arbitrator, or other person before whom a legal proceeding is held or taken; "Judge" means a Judge of the Supreme Court; "Legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration; "Officer" of a bank includes the manager, accountant, and cashier of the bank.

[3—22 do not relate to matters within the scope of this work.]

Bank holidays.

Bank holidays. 23. The several days mentioned in the third Schedule hereto (which days are herein referred to as "bank holidays") shall be kept as close holidays in all banks in New Zealand: Provided that a) Where any bank holiday falls on a Sunday, the day next following shall be observed as a bank holiday within the meaning and for the purposes of this Act; b) If such following day is also a bank holiday, then the next following day which is not a bank holiday shall also be observed as a bank holiday. — E. 34 & 35 Vic. c. 17, § 1; N. S. W. a. (No. 9 of 1898) 14; V. a. (No. 1164) 17; T. 4; S. A. a. (37 Vic. No. 19) 1; Q. a. (4 Edw. 7) 4; W. A. a. (48 Vic. No. 9) 1.

Special bank holidays. 24. With the previous consent in writing of the Minister of Finance, but not otherwise, the managing director, general manager, or other chief officer in New Zealand for the time being of any bank may, by writing under his hand, appoint any day or portion of a day as a special bank holiday or part holiday at the bank under his direction or control, and such holiday or part holiday may be observed at any specified place or places in which the bank carries on business within New Zealand, subject to the provisions following, that is to say: a) It shall not be lawful at any time to appoint more than two consecutive days as holidays, or more than three consecutive days as part holidays; b) Any day or portion of a day so appointed shall be notified by public advertisement, purporting to be by proper authority, not less than three times within the ten days immediately preceding such day, in some newspaper circulating in the provincial district in which the holiday or part holiday is to be observed; c) A copy of such notice shall be kept visibly exposed in a front window or on or near the main entrance-door of the building in which the bank carries on its business, at the place or places where the holiday or part holiday is to be observed, for at least three days before such day; d) The production of a newspaper containing any such advertisement shall be *prima facie* proof that the holiday or part holiday was duly appointed to be observed at the place or places specified in that advertisement; e) Such day shall be a special bank holiday or part holiday only at the particular bank or banks specified in the notice hereby required; f) Every special bank holiday or part holiday shall be deemed to be a bank holiday within the meaning of this Act at the place or places at which it is appointed as aforesaid to be observed, but at no other; g) Bills due on a part holiday shall be payable on that day within the business hours during which the bank is open. — E. 34 & 35 Vic. c. 17, § 4; N. S. W. a. (No. 9 of 1898) 17; V. a. (No. 1164) 20; T. 8; S. A. a. (37 Vic. No. 19) 4; Q. a. (4 Edw. 7, No. 8) 5; W. A. a. (48 Vic. No. 8) 5. See N. S. W. c. (No. 80 of 1900) 2, and note.

Employees not to be employed on bank holidays. 25. 1. No employee of a bank shall be employed during any part of a bank holiday or special bank holiday except for the purpose of dealing with correspondence and urgent matters of the day. 2. Every bank that commits a breach of this section is liable for each offence to a fine not exceeding five pounds in respect of each employee so employed. 3. This section shall not apply in the case of any person employed on the day, or any one of the seven days immediately preceding or following the day, upon which the bank balances its books for the half-year, nor in the case of any caretaker of the bank premises: Provided that not less than seven days' notice in writing of the day on which the bank balances its books as aforesaid shall be given to the Inspector of Factories.

Disposal of bank documents.

Destruction of cheques, etc., by bankers. 26. 1. All cheques and bank drafts in the possession of the bank on which they are drawn, and all bills of exchange or promissory notes in the possession of a bank and made payable at that bank, may be destroyed by such bank after the expiration of ten years from the date thereof in the case of documents payable on demand, or from the due date thereof

in the case of all other documents. 2. This section shall apply to cheques, drafts, bills, and notes received by a bank either before or after the coming into operation of this Act. 3. No such document shall be destroyed under the authority of this section at any time after a demand for the delivery of such document has been made to the bank by the person entitled thereto.

Schedules.

First Schedule. Enactments consolidated.

- 1880, No. 22. The Banks and Bankers Act, 1880.
- 1882, No. 68. The Banks and Bankers Act Amendment Act, 1882.
- 1887, No. 5. The Banks and Bankers Act Amendment Act, 1887.
- 1893, No. 11. The Bank-note Issue Act, 1893.
- 1893, No. 15. The Banks and Bankers Act Amendment Act, 1893.
- 1894, No. 6. The Bank Directors and Shares Transfer Act, 1894.
- 1894, No. 64. The Banking Act, 1894.
- 1902, No. 38. The Bank Holidays Act, 1902.
- 1906, No. 12. The Bank-shares Transfer Act, 1906.
- 1907, No. 61. The Bills of Exchange Act Amendment Act, 1907.

(Second Schedule relates to bank returns.)

Third Schedule. Bank Holidays.

(As amended by 1910, No. 71.)

New Year's Day.

Good Friday.

The day after Good Friday.

Easter Monday.

Christmas Day.

The day after Christmas Day.

The Sovereign's Birthday.

Dominion Day.

Labour Day.

The 23d Day of April, in celebration of Saint George's and Saint David's Day.

The 17th day of March, in celebration of Saint Patrick's Day.

The 30th day of November, in celebration of Saint Andrew's Day.

Public Holidays Act.

No. 71 of 1910. An Act to make better Provision for the Observance of certain Days as Public Holidays (3d December, 1910).

Short title. 1. This Act may be cited as the *Public Holidays Act, 1910*.

Certain holidays to be observed on a Monday. 2. Where in any Act or in any award or industrial agreement reference is made: a) To Labour Day, such reference shall hereafter be deemed to be to the fourth Monday in October, and not to the second Wednesday in October; b) To Dominion Day, such reference shall hereafter be deemed to be to the fourth Monday in September; c) To the Sovereign's Birthday, such reference shall hereafter be deemed to be to the next succeeding Monday when such birthday falls on a Sunday; d) To Christmas Day or New Year's Day, such reference shall, when those days fall on a Sunday, hereafter be deemed to be to the next succeeding Monday, and in that case any reference to Boxing Day shall be deemed to be to the next succeeding Tuesday.

[3. Amends Labour Department and Labour Day Act, 1908.]

[4. Amends Bank Act, 1908, Sched. 3, and is there incorporated.]

[5. Amends Factories Act, 1908.]

Shipping and Seamen Acts.

a) No. 178 of 1908. An Act to consolidate certain Enactments of the General Assembly relating to Shipping and Seamen.

Short title. Enactments consolidated. Savings. 1. 1. The short title of this Act is *The Shipping and Seamen Act, 1908* and it shall not come into operation until His Majesty's pleasure thereon has been publicly signified in manner provided

by the Constitution Act. 2. This Act is a consolidation of the enactments mentioned in the first Schedule hereto, and with respect to those enactments the following provisions shall apply: a) All offices, appointments, Proclamations, Orders in Council, orders, rules, regulations, certificates, licenses, warrants, permits, registers, records, registrations, entries, instruments, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated; b) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act. 3. This Act is divided into Parts, as follows: Part I. General Management. (Sections 5 to 20.) Part II. Masters, Officers, and Seamen. (Sections 21 to 167.) Part III. Regulation of Passengers. (Sections 168 and 169.) Part IV. As to Steamships. (Sections 170 to 187.) Part V. Ships propelled by other Power than Steam, and Restricted-limit Steamships. (Sections 188 and 189.) Part VI. New Zealand Pilots. (Section 190.) Part VII. Safety. (Sections 191 to 232.) Part VIII. Shipping Inquiries and Courts. (Sections 233 to 250.) Part IX. Wreck and Salvage (Sections 251 to 283.) Part X. Lighthouses. (Sections 284 to 292.) Part XI. Liability of Shipowners. (Sections 293 to 304.) Part XII. Registration of Shipping. (Sections 305 to 326.) Part XIII. Legal Proceedings. (Sections 327 to 341.) Part XIV. Foreign Deserters. (Sections 342 to 354.)

Preliminary.

Application of Act. Limitation of application. 2. 1. This Act applies to all British ships registered at, trading with, or being at any place within the jurisdiction of New Zealand, and to the owners, masters, and crews thereof, except as hereinafter provided. 2. The provisions of this Act shall be so construed as not to exceed the legislative powers conferred on the General Assembly by the Constitution Act. 3. This Act does not apply to ships belonging to His Majesty, nor to ships belonging to the Government of New Zealand except as mentioned in subsection three of the next succeeding section, and except also in so far as any specified sections of this Act may, by order of the Governor in Council, be made applicable to such last-mentioned ships.

[3—292 do not relate to matters within the scope of this work.]

Part XI. Liability of Shipowners.

Owner, etc., not liable in certain cases. 293. If the owner of any ship transporting merchandise or property to or from any port in New Zealand exercises due diligence to make the ship in all respects seaworthy and properly manned, equipped, and supplied, neither the ship, her owners, charterers, or agent shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of the ship, nor shall the ship, her owners, charterers, agent, or master be held liable for losses arising from dangers of the sea or other navigable waters, acts of God, or public enemies, or the inherent defect, quality, or vice of the thing carried, or from insufficient of package, or seizure under legal process, or for loss resulting from any act or omission of the shipper or owner of the goods, his agent or representative, or from saving or attempting to save life or property at sea, or from any deviation in rendering such service.

Limitation of shipowners' liability for loss or damage to goods. 294. The owner of a British ship, or of any share therein, shall not be liable to make good to any extent any loss or damage happening without his actual fault or privity in the following cases, namely: a) Where any goods taken in or put on board his ship are lost or damaged by reason of fire on board the ship; or b) Where any gold, silver, diamonds, watches, jewels, or precious stones taken in or put on board his ship, the true nature and value of which were not at the time of shipment declared by the owner or shipper thereof to the owner or master of the ship in the bills of lading or otherwise in writing, are lost or damaged by reason of any robbery, embezzlement, making away with, or secreting thereof.

Limitation in case of loss of life, etc. 295. 1. The owners of a ship, British or foreign, shall not, where all or any of the following occurrences take place without

their actual fault or privity, that is to say: a) Where any loss of life, or personal injury is caused to any person being carried in their ship; b) Where any damage or loss is caused to any goods on board their ship; c) Where any loss of life or personal injury is caused to any person carried in any other ship by reason of the improper navigation of their ship; d) Where any loss or damage is caused to any other ship, or to any goods on board any other ship, by reason of the improper navigation of their ship; be liable to damages beyond the following amounts; e) In respect to loss of life or personal injury, either alone or together with loss of or damage to ships or goods, an aggregate amount not exceeding fifteen pounds for each ton of their ship's tonnage; and f) In respect of loss of or damage to ships or goods, whether there is in addition loss of life or personal injury or not, an aggregate amount not exceeding eight pounds for each ton of their ship's tonnage. 2. The owner of every sea-going ship or share therein shall be liable in respect of every such loss of life, personal injury, loss of or damage to ships or goods arising on distinct occasions, to the same extent as if no other loss, injury, or damage had arisen.

Tonnage, how calculated. 296. For the purposes of the last preceding section: a) The tonnage of a steamship shall be her gross tonnage without deduction on account of engine-room; and the tonnage of a sailing-ship shall be her registered tonnage: Provided that there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use which is certified under the regulations with regard thereto in the sixth Schedule hereto; b) Where a foreign ship has been or can be measured according to British law, her tonnage as ascertained by that measurement shall, for the purpose of this section, be deemed to be her tonnage; c) Where a foreign ship has not been and cannot be measured according to British law, the Chief Surveyor shall, on receiving from or by the direction of the Court hearing the case in which the tonnage of the ship is in question such evidence concerning the dimensions of the ship as can be furnished, give a certificate under his hand stating what would in his opinion have been the tonnage of the ship if she had been duly measured according to British law, and the tonnage so stated in that certificate shall, for the purposes of this section, be deemed to be the tonnage of the ship.

Court may consolidate claims. 297. Where any liability is alleged to have been incurred by the owner of a British or foreign ship in respect of loss of life, personal injury, or loss of or damage to ships or goods, and several claims are made or apprehended in respect of that liability, then the owner may apply to the Supreme Court, in its Admiralty jurisdiction, and the Court may determine the amount of the owner's liability, and may distribute that amount rateably among the several claimants, and may stay any proceedings pending in any other Court in relation to the same matter, and may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the Court thinks just.

Part owners to account in respect of damages. 298. All sums paid for or on account of any loss or damage in respect whereof the liability of owners is limited under the provisions of this Part of this Act, and all costs incurred in relation thereto, may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof.

Insurance of certain risks valid. 299. An insurance effected against the happening, without the owner's actual fault or privity, of any or all of the events in respect of which the liability of owners is limited under this Part of this Act shall not be invalid by reason of the nature of the risk.

Bill of lading not to contain certain clauses. 300. 1. Where any bill of lading or shipping document contains: a) Any clause, covenant, or agreement whereby the manager, agent, master, or owner of any ship, or the ship itself shall be relieved from liability for loss or damage arising from the harmful or improper condition of the ship's hold, negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery of any and all lawful merchandise or property committed to its or their charge; or b) Any covenant or agreement whereby the obligations of the owners of the ship to exercise due diligence to properly equip, man, provision, and outfit the ship, to make the hold of the ship fit and safe for the reception of cargoes, and to make her seaworthy and capable of performing her intended voyage, or whereby the obligations of the master, officers, agents, or servants to carefully

handle and stow her cargo, and to care for and properly deliver the same, are in any wise lessened or avoided — such clause, covenant, or agreements shall be null and void and of no effect, unless the Court before which any question relating thereto is tried adjudges the same to be just and reasonable. 2. This section shall not apply to the transportation of live animals. — C. (No. 14 of 1904) 3, 5.

Gold, silver, or diamonds, etc. 301. 1. When any person takes or puts, or causes to be taken or put, on board any ship any gold, silver, diamonds, watches jewels, precious stones, or passengers' luggage, he shall furnish to the owner or agent of the ship a list of such articles, with their value, and in the event of their being lost or destroyed, the owner of the ship shall not be liable to pay a greater amount than such declared value. 2. If the value of the articles is not declared at or before the time of shipment, the owner of the ship shall not, in the event of their loss or destruction, be liable to pay more than fifty pounds. 3. The owner of the ship may charge a special rate of freight for the carriage of such articles, whether they are put or taken on board as cargo or passengers' luggage.

Short delivery and pillage. 302. 1. The agents in New Zealand of any ship not registered in New Zealand shall be deemed to be the legal representatives of the master and owner of the ship after the departure of the ship from the port at which she was discharged for the purpose of receiving and paying claims for short-delivery or pillage of cargo, and the amount of any such claim may be recovered from such agents in any court of competent jurisdiction: Provided that it shall be lawful for such agents, by notice in writing delivered to the Collector not later than twenty four hours before the departure of any ship, to decline to accept any responsibility under this section in respect to that ship, in which case the master and some other person approved by the Collector shall before the ship is allowed her clearance, enter into a joint and several bond in a sum not exceeding the value of her cargo as shown by the ship's papers, for the payment of any sum which, together with costs, may be recovered against the agents of such ship. 2. No proceedings for the recovery of any claim under this section shall be taken unless notice of the claim is given to the agents not later than fourteen days after the delivery of the cargo in respect to which the claim is made.

Bill of lading to be binding on master and owner. 303. Every bill of lading issued by the manager, agent, master, or owner of a ship, and signed by any person purporting to be authorised to sign the same, shall be binding on the master and owner of the ship as if the bill of lading had been signed by the master.

Liability in certain cases not affected. 304. Nothing in this Part of this Act shall be construed to lessen or take away any liability to which any master or seaman, being also owner or part owner of the ship to which he belongs, is subject in his capacity of master or seaman, or, except the last preceding section, to extend to any British ship which is not recognised as a British ship within the meaning of this Act.

[§§ 305—354 do not relate to matters within the scope of this work.]

Schedules.

First Schedule. Enactments consolidated.

- 1860, No. 4. The Foreign Seamen's Act, 1860.
- 1867, No. 10. The Old Metal and Marine Store Dealers Act, 1867: Section 12.
- 1901, No. 74. The New Zealand Ensign Act, 1901.
- 1903, No. 96. The Shipping and Seamen Act, 1903: Except section 345.
- 1905, No. 63. The Shipping and Seamen Act Amendment Act, 1905.

[*Schedules II. to XV. relate to matters not within the scope of this work.*]

b) No. 36 of 1909. An Act to amend the Merchant Shipping Act, 1908 (4th March, 1911).

Limitation of liability of shipowner. 40. 1. The limitation of the liability of the owners of any ship established by section two hundred and ninety-five of the principal Act in respect of loss of or damage to ships, goods, merchandise, or other things shall extend and apply to all cases where (without their actual fault or pri-

vity) any loss or damage is caused to property or rights of any kind, whether on land or on water, or whether fixed or moveable, by reason of the improper navigation or management of the ship. 2. The limitation of liability established by section two hundred and ninety five of the principal Act or by this section shall relate to the whole of any losses and damages which may arise upon any one distinct occasion, although those losses and damages may be sustained by more than one person, and shall apply whether the liability arises at common law or under any Act, and notwithstanding anything contained in such Act. 3. Nothing in this section shall affect the provisions of the *Workers' Compensation Act, 1908*.

Section 300 of principal Act amended. 41. Section three hundred of the principal Act is hereby amended by adding thereto the following subsection: "3. This section applies to all bills of lading and shipping documents in respect of merchandise or property to be carried to or from any part or place in New Zealand, whether the ship is a British or a foreign ship, and whether the loss or damage has occurred in New Zealand or at sea or in any part or place out of New Zealand, and whether the contract of carriage is made in New Zealand or elsewhere, or is governed in other respects by the law of New Zealand or by the law of any other country."

Liability of owners of ships launched but not registered. 42. 1. Notwithstanding anything in section three hundred and four of the principal Act, the provisions of Part XI of that Act shall extend and apply to the owners, builders, or other parties interested in any ship built in New Zealand from and including the launching of the ship until the registration thereof under Part XII of the principal Act or under the Imperial Merchant Shipping Act: Provided that this section shall not be construed so as to extend section two hundred and ninety-four of the principal Act to the owners of any ship or any share therein after the ship has become a foreign ship. 2. For the purposes of this section the tonnage of a ship shall be ascertained as provided by paragraphs b) and c) of section two hundred and ninety-six of the principal Act which regard to foreign ships. 3. For the purposes of this section the term "ship" shall include every description of vessel used or intended to be used in navigation and not propelled by oars, and whether completed or in course of completion or construction.

Liability of charterer. 43. Part XI of the principal Act (relating to the liability of shipowners) shall be read so that the word "owner" shall be deemed to include any charterer to whom the ship is demised.

Marine Insurance Act.

No. 112 of 1908. An Act to consolidate certain Enactments of the General Assembly relating to Marine Insurance.¹⁾

Short title. Enactments consolidated. Savings. 1. 1. The short title of this Act is *The Marine Insurance Act, 1908*. 2. This Act is a consolidation of the enactments mentioned in the first Schedule hereto. 3. All matters and proceedings commenced under those enactments, and pending or in progress on the coming into operation of this Act may be continued, completed, and enforced under this Act. — E. 1; C. 1.

Interpretation of terms. 2. In this Act, if not inconsistent with the context: "Action" includes counterclaim and set-off. "Freight" includes the profit derivable by a shipowner from the employment of his ship to carry his own goods or movables, as well as freight payable by a third party, but does not include passage-money. "Movables" means any movable tangible property other than the ship, and includes money, valuable securities, and other documents. "Policy" means a marine policy. — E. 91; C. 3.

Marine insurance.

3. = C. §§ 7—8, except: in § 8 (2), "as provided by this section" for "as by this section provided", and "as defined by this Act" for "as by this Act defined".

¹⁾ The references are to (E.) the Imperial Act, 6 Edw. 7, c. 41, and (C.) the Commonwealth *Marine Insurance Act, 1909* (No. 11 of 1909), reprinted *supra*.

4. = C. § 9, except: subsection 2. a) reads as follows: "Any ship, goods, or other movables (such property being hereinafter referred to as 'insurable property') are exposed to maritime perils". At the end of the section "which may be" is omitted before "designated".

Insurable interest.

5—15. = C. §§ 10—20.

16. = C. § 21, except: "unless there is an express" is substituted for "unless there be an express"; "but" is omitted before "the provisions".

Insurable value.

17. = C. § 22, except: before "in the case of a steamship" the word "and" is substituted for "the insurable value".

Disclosure and representations.

18. = C. § 24, except: in 1. "which is" is omitted before "known to the assured"; in 3. b) "which is" is omitted; in 3. d) "any express" is substituted for "an express"; in 4. "is material" is substituted for "be material".

19. = C. § 25, except: in a) "which is" is omitted before "known to him", and "him" is inserted after "to be known by"; in b) "comes to his knowledge" is substituted for "come to his knowledge".

20. = C. § 26, except: in 1. "is untrue" is substituted for "be untrue"; in 4. "if it is substantially correct" is substituted for "if it be substantially correct"; in 5. "is made" is substituted for "be made"; in 7. "is material" is substituted for "be material".

21. = C. § 27, except: "although it is unstamped" is added at end of section; and "is then issued" is substituted for "be then issued".

The policy.

Contract must be embodied in policy. 22. 1. No action shall be brought on a contract of marine insurance unless it is embodied in a marine policy in accordance with this Act. 2. The policy may be executed and issued either at the time when the contract is concluded or afterwards. — E. § 22; C. § 28.

23. = C. § 29.

24. = C. § 30, except: in 2. "is expressed" is substituted for "be expressed".

25. = C. § 32.

Failure to execute and stamp policy. No payment to be made unless policy so executed. 26. 1. If any person, whether as an insurer or as an agent of an insurer, directly or indirectly receives or takes credit in account for any premium or consideration for any contract of marine insurance, and does not before or within thirty days after receiving or taking credit for such premium or consideration duly execute and stamp, or procure to be duly executed and stamped, a policy of such insurance, he shall be liable to a fine of one hundred pounds. 2. If any person, whether as an insurer or as the agent of an insurer, pays any sum of money upon any loss under a contract of marine insurance which is not expressed in a duly stamped policy, or if he in any way settles any claim made in respect of such a contract, he shall be liable to a fine of one hundred pounds. 3. This section does not apply to contracts of re-insurance of risks in respect whereof policies have been duly executed and stamped. 4. This section applies to the agent of an insurer, whether such insurer resides or carries on business in New Zealand or elsewhere.

27. = C. § 31, except: in 1. "from one place to another or others" is substituted for "from one place to another place or to other places"; 2. reads as follows: "A time policy which is made for any time exceeding twelve months is invalid; but a time policy may (without being liable to any additional stamp duty) contain an agreement to the effect that, in the event of the ship being at sea or the voyage otherwise not completed on the expiration of twelve months, the subject-matter of the insurance shall be held covered until the arrival of the ship at her destination, or for a reasonable time thereafter, not exceeding thirty days".

28. = C. § 33, except: in 3. "is total" is substituted for "be total".

29—30. = C. §§ 34—35.

31. = C. § 37.

Construction of terms in policy. 32. Subject to the provisions of this Act, and unless the context of the policy otherwise requires, the terms and expressions

mentioned in the second Schedule to this Act have, when contained in a policy, the meaning and operation attributed to them in the said Schedule. — E. § 30; C. 36.

Double insurance.

33. = C. § 38, except: in 2. a) "thinks fit" is substituted for "think fit".

Warranties, etc.

34. = C. § 39, except: in 3. "whether material" is substituted for "whether it be material", and "is not so complied with" is substituted for "be not so complied with".

35. = C. § 40.

36. = C. § 41, except: in 3. "is inconsistent therewith" is substituted for "be inconsistent therewith".

37. = C. § 42, except: 2. reads as follows: "Where a ship is expressly warranted neutral, there is also an implied condition that, so far as the assured can control the matter, the ship shall be properly documented, that is to say, that she shall carry the necessary papers to establish her neutrality, and that her papers shall not be falsified or suppressed, and that simulated papers shall not be used. If any loss occurs through breach of this condition, the insurer may avoid the contract."

38. = C. § 43.

39. = C. § 44, except: "is safe" is substituted for "be safe".

40—42. = C. §§ 45—47.

The voyage.

43. = C. § 48, except: in 1. "is not so commenced" is substituted for "be not so commenced"; in 2. "by showing" is omitted after "or".

44—49. = C. §§ 49—54.

50. = C. § 55, except: in 1. g) "is one" is substituted for "be one".

Assignment of policy.

51—52. = C. §§ 56—57.

The premium.

53. = C. § 59.

54. = C. § 60, except: "insurer and the broker" is substituted for "insurer and broker".

Loss and abandonment.

55. = C. § 61, except: in 1. "any loss not proximately caused" is substituted for "any loss which is not proximately caused"; in 2. b) "is caused" is substituted for "be caused".

56—59. = C. §§ 62—65.

60. = C. § 66, except: the concluding part of 2. b) of the C. Act, beginning with "in estimating the cost of repairs" is placed after 2. c), and constitutes 3. of the N. Z. Act.

61. = C. § 67.

62. = C. § 68, except: in 1. "loss can be treated only" is substituted for "loss can only be treated"; in 3. "the" is inserted before "receipt".

63. = C. § 69, except: in 2. "which is in course of being earned" is substituted for "in course of being earned".

Partial losses (including salvage and general average and particular charges).

64. = C. § 70, except: in 1. "which is caused" is substituted for "caused".

65. = C. § 71, except: in 2. "and does not include" is substituted for "they do not include".

66. = C. § 72.

Measure of indemnity.

67. = C. § 73, except: in 2. "are more than one" is substituted for "be more than one".

68. = C. § 74, except: in 1. "is a valued policy" is substituted for "be a valued policy"; in 2. "is an unvalued policy" is substituted for "be an unvalued policy".

69—70. = C. § 75—76.

71. = C. § 77, except: in 4. "is no such price" is substituted for "be no such price"; and the entire sentence beginning with "gross proceeds" to the end of the subsection is omitted.

72. = C. § 78.

73. = C. § 79, except: in 1. "is not insured" is substituted for "be not insured", and "is insured" for "be insured".

74—75. = C. §§ 80—81.

76. = C. § 82, except: in 1. "is apportionable" is substituted for "be apportionable" in both places where it occurs.

77. = C. § 83, except: in 2. "provided that" is omitted.

78. = C. § 84.

Rights of insurer on payment.

79—81. = C. §§ 85—87.

Return of premium.

82—84. = C. §§ 88—90.

Mutual insurance.

85. = C. § 91.

Supplemental.

86—88. = C. §§ 92—94.

Rules of common law, if not inconsistent, to apply. 89. The rules of the common law including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to contracts of marine insurance.

Slip as evidence. 90. Where there is a duly stamped policy, reference may be made in any legal proceeding to the slip or covering note, although it is not stamped. — E. § 89; C. § 95.

Schedules.

First Schedule. Enactments consolidated.

1907, No. 24. The Marine Insurance Act, 1907.

Second Schedule. Rules for the construction of policies.

[This is substantially identical with the rules for construction contained in the second Schedule of the Commonwealth Act.]

Bankruptcy Act.

No. 12 of 1908. An Act to consolidate certain Enactments of the General Assembly relating to Bankruptcy.

Short title. Enactments consolidated. Savings. 1. 1. The short title of this Act is *The Bankruptcy Act, 1908*. 2. This Act is a consolidation of the enactments mentioned in the First Schedule hereto, and with respect to those enactments the following provisions shall apply: a) All districts, offices, appointments, adjudications, regulations, rules, Proclamations, orders, warrants, notifications, resolutions, instruments, and generally all acts of authority which originated under any of the said enactments or any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated; b) All estates and persons brought under or subject to the operation of the said enactments before the coming into operation of this Act shall be subject to the provisions of this Act, and all such estates shall, from the date of the coming into operation of this Act, vest in and be administered by the assignees in whom they would have been respectively vested and by whom they would have been respectively administered had the adjudication taken place immediately on the coming into operation of this Act; c) All matter and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act. 3. This Act is divided into Parts, as follows: Part I. The Court. (Sections 3 to 19.) Part II. The

Official Assignee. (Sections 20 to 25.) Part III. Proceedings up to Adjudication. (Sections 26 to 56.) Part IV. Supervisors. (Section 57.) Part V. Duties of Bankrupt. (Sections 58 to 60.) Part VI. Administration of Bankrupt's Property. (Sections 61 to 93.) Part VII. Meetings of Creditors. (Sections 94 to 97.) Part VIII. Proofs of Debt. (Section 98 to 117.) Part IX. Composition with Creditors. (Section 118.) Part X. Distribution of Assets. (Sections 119 to 123.) Part XI. Discharge (Sections 124 to 135.) Part XII. Annulling of Adjudication. (Sections 136 and 137.) Part XIII. Penal. (Sections 138 to 147.) Part XIV. Miscellaneous. (Sections 148 to 176.) — E. 46 & 47 Vic. c. 52, § 1.

Interpretation. 2. In this Act, if not inconsistent with the context: "Adjudication" or "order of adjudication" means the filing of a debtor's petition or an order of a Court adjudging a person a bankrupt on a creditor's petition. "Advertised" means published in one or more newspapers published or generally circulated within the place in which the proceeding or matter is taken or pending. "Assignee" or "Official Assignee" means the Official Assignee or Deputy Assignee appointed under this Act, and, where the context requires it, the Assignee having charge of any particular estate. "Available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the filing of the petition on which the order of adjudication is made. "Debt provable in bankruptcy" or "provable debt" includes any debt, demand, or liability by this Act made provable in bankruptcy. "District" means the district of the Court for the purposes of bankruptcy jurisdiction. "District Court" means a Court holden by virtue of any Acts for the time being in force relating to District Courts and having jurisdiction in bankruptcy. "Goods" includes all chattels personal. "Judge" means a Judge of the Court, and includes a Magistrate having jurisdiction in bankruptcy. "Liability" includes: a) Any compensation for work or labour done; b) Any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the bankrupt; and c) Generally includes any express and implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of money or money's worth, whether the payment is as respects amount fixed or unliquidated, as respects time, present or future, certain, or dependent on any one or more contingencies, as respects mode of valuation capable of being ascertained by fixed rules or as matter of opinion. "Magistrate's Court" means a Magistrate's Court constituted under *The Magistrate's Courts Act, 1908*, and having jurisdiction in bankruptcy. "Ordinary resolution" means, a resolution decided by a majority in value of those of the creditors who are present personally or by proxy, at a meeting of creditors and voting on such resolution. "Prescribed" means prescribed by this Act or by the rules. "Property" means and includes land, money, goods, things in action, goodwill, and every valuable thing whether real or personal, and whether situate in New Zealand or elsewhere, also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined. "Registrar" means the Registrar or Clerk of the Court, or the deputy for the time being of any such Registrar or Clerk. "Resolution" means ordinary resolution. "Rules" means the rules in force or to be made under this Act, and includes forms. "Secured creditor" means a person holding a mortgage, charge, lien, or security on the property of the debtor, or any part thereof, as a security for the debt due to him from the debtor, whether given directly or indirectly through another person as security for a debt due to such creditor. "Settlement" includes any conveyance or transfer of property. "Sheriff" includes any officer charged with the execution or process of any Court. "Special resolution" means a resolution decided by a majority in number and three-fourths in value of those of the creditors who are present, personally or by proxy, at a meeting of creditors and voting on the resolution, which resolution is confirmed by a like majority of the creditors present, personally or by proxy, at a subsequent meeting, of which notice has been duly given, stating the purport of the resolution to be confirmed, and held at an interval of not less than fourteen days nor more than one month from the date of the meeting at which the resolution was first passed. "The Court" means the Court having jurisdiction as provided by this Act. — E. 46 & 47 Vic. c. 52, § 168.

Part I. The Court. Constitution.

Court having jurisdiction. 3. The Court having jurisdiction in bankruptcy shall be the Supreme Court in each district thereof, as constituted under *The Judicature Act, 1908*. — E. 46 & 47 Vic. c. 52, § 92 (1).

Proclamation may issue conferring bankruptcy jurisdiction on District Courts. Proclamation may be revoked or altered. 4. 1. The Governor may from time to time, by Proclamation, declare that any District Court shall have jurisdiction in bankruptcy throughout the whole or any part of its district, as specified in such Proclamation, from a date mentioned therein. 2. From such date the Supreme Court shall cease to have any jurisdiction in bankruptcy in the said district or part thereof, as specified in such Proclamation, except in appeal cases, and except in regard to bankruptcies in respect to which proceedings, either before or after adjudication, have been taken prior to such date, and except in regard to bankruptcies the proceedings in which have been transferred to it under section eleven hereof; and after such date the District Court shall, except as aforesaid, be the Court having jurisdiction in bankruptcy for the district or part thereof specified in such Proclamation. 3. Any such Proclamation may be revoked, or the boundaries of the district or part thereof affected thereby may from time to time be altered by the Governor, by Proclamation, and such revocation or alteration shall take effect accordingly from the date specified in such Proclamation. — E. 46 & 47 Vic. c. 52, § 92 (2—5).

Proclamation may issue conferring bankruptcy jurisdiction up to £300 on Magistrate's Courts. Magistrate may be appointed to exercise bankruptcy jurisdiction. How Magistrate's Court jurisdiction determined. Proclamation may be revoked or altered. 5. 1. The Governor may from time to time, by Proclamation, declare that the Magistrate's Court shall have jurisdiction in bankruptcy throughout the whole or any part of a district, to be specified or described in such Proclamation, in regard to all bankruptcies in which the liabilities of the bankrupt do not exceed three hundred pounds, as alleged by the bankrupt or the petitioning creditor in his petition as hereinafter provided. 2. From the date mentioned in such Proclamation for the coming into force thereof the Supreme Court shall cease to have any jurisdiction in bankruptcy in any such cases except in appeal cases, and except in regard to bankruptcies in respect to which proceedings, either before or after adjudication, have been taken prior to the date on which the said Proclamation came into force, and except in regard to bankruptcies the proceedings in which have been transferred to it under section eleven hereof; and after such date the Magistrate's Court shall be the Court having jurisdiction in bankruptcy in such cases in which the liabilities do not exceed three hundred pounds as aforesaid: Provided that no such Proclamation shall be issued in respect of a district as defined therein within which a Supreme Court Judge resides: Provided also that only those offices of the Magistrate's Court specified in the Proclamation shall be offices of the Court for the purposes of bankruptcy business, and the Magistrates having jurisdiction in bankruptcy shall hold Courts in Bankruptcy only at such offices, or the Courtroom attached thereto or used therewith. 3. The Governor may also from time to time appoint any one or more Magistrates to exercise jurisdiction in bankruptcy, and no other Magistrate shall exercise the powers of the Magistrate's Court in bankruptcy save a Magistrate specially appointed for the purpose under this subsection. 4. For the purpose of determining whether any such Magistrate's Court has jurisdiction in any such case, the petition on which the order of adjudication is made, whether by a debtor or by a creditor, shall contain an allegation that the liabilities do not exceed three hundred pounds: Provided that none of the proceedings in any such bankruptcy shall be invalidated by reason only that the liabilities exceed three hundred pounds; but in such case the Court otherwise having jurisdiction in such bankruptcy may, on the application of the debtor or any creditor, and whether before or after adjudication, order the proceedings to be transferred to such latter Court, and thereupon the proceedings shall be transferred accordingly, in like manner and with the like effect as if consequent upon a resolution of the creditors as specified in section eleven hereof. 5. Any such Proclamation may be revoked, or the boundaries of the district or part thereof affected thereby may be from time to time altered by the Governor, by Proclamation; and such revocation or alteration shall take effect accordingly from the date specified in such Proclamation. — E. 46 & 47 Vic. c. 52, § 121.

Courts to act in aid of each other. 6. All Courts having jurisdiction in bankruptcy, and the officers of such Courts respectively, shall severally act in aid of and be auxiliary to each other in all bankruptcy matters; and an order of the Court seeking aid, together with a request to another of the said Courts, shall be deemed sufficient to enable the latter Court to exercise, in regard to the matters directed by such order, the like jurisdiction as the Court which made the request, as well as the Court to which the request is made, could exercise in similar matters within their respective jurisdictions. — E. 46 & 47 Vic. c. 52, § 117.

Powers of Judges.

Judges may exercise the powers of Court, and may so exercise in Chambers. 7. Every Judge may exercise in any part of New Zealand all the powers of the Court, and may exercise in Chambers the whole or any part of the jurisdiction of the Court: Provided that the public examination of a bankrupt, an application for an order of discharge, and an application to commit any person to prison for contempt of Court shall be heard and disposed of in open Court. — E. 46 & 47 Vic. c. 52, § 98.

Jurisdiction.

Jurisdiction extends throughout New Zealand. 8. Every Court having jurisdiction in bankruptcy shall have jurisdiction throughout New Zealand in regard to every bankruptcy where the adjudication was made within its own district or the proceedings have been transferred to it. — E. 46 & 47 Vic. c. 52, § 97 (1).

Court's powers to make orders. To decide questions of priorities. To hear, determine, and make order where Assignee makes claim. To punish. To review orders. To exercise other powers. 9. Every Court having jurisdiction in bankruptcy may: a) Make orders or decrees in relation to the property of any debtor or bankrupt who becomes subject to the provisions of this Act, in the same manner as the Supreme Court, in its jurisdiction at law or in equity, can make any orders or decrees respectively; b) Decide all questions of priorities, and all other questions, whether of law or of fact, arising in any case of bankruptcy coming within the cognisance of such Court, or which the Court deems it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case; c) Hear, determine and make order: i) In any matter of bankruptcy relating to the disposition of the estate and effects of the bankrupt, or of any estate or effects taken under the bankruptcy and claimed by the Assignee for the benefit of the creditors, or relating to any acts done or sought to be done by the Assignee in his character of Assignee by virtue of the bankruptcy, and also in any application for an order of discharge; and ii) In any matter in which the Assignee claims any property from third parties for the benefit of creditors, or in relation to the setting-aside of alleged fraudulent deeds, or transfers of or other dealings with property, and also iii) In any other matter, whether in bankruptcy or not, where the Court has jurisdiction under this Act over the subject of the petition or application; d) Punish any bankrupt, creditor, or other person as herein provided; e) Review, rescind, or vary any order or decree made by it under this Act; f) Exercise any other powers given to it by this Act or the rules. — E. 46 & 47 Vic. c. 52, §§ 102, 105. Where jurisdiction has attached by virtue of the debtor's petition the debtor can not oust the jurisdiction of the Court by withdrawing his application for adjudication. — *In re Gilmour*, 6 L. R. (N. Z.) 421. The Court may order property liable to be wasted (e. g. banknotes) to be brought into Court. — *In re McLeod*, L. R. 3 S. C. (N. Z.) 223. See further as to practice, *In re Sheppard, Mac*. (N. Z.) 884 (setting aside fraudulent preference); *in re Hutchison*, L. R. 3 S. C. (N. Z.) 462 (payment of money into Court); *Regina v. Henderson*, 4 J. R. (N. S.) S. C. (N. Z.) 107 (appeals).

District Courts and Magistrates' Courts.

Powers of District and Magistrate's Courts. Questions in District or Magistrate's Court may be referred to Supreme Court. 10. 1. A District Court and a Magistrate's Court shall, for the purposes of their bankruptcy jurisdiction, in addition to the ordinary powers of such Court, have all the powers and jurisdiction of the Supreme Court; and the orders and decrees of such Court, or of any Judge thereof, shall be of the same force as if they were orders or decrees of the Supreme Court, or of any Judge thereof, and may be enforced by the District or Magistrate's Court, as the case may be, in the same manner. 2. If any question of law arises in any bankruptcy proceeding in a District Court or Magistrate's Court which the parties to the ques-

tion desire, or which one of them and the Judge of the District Court or the Magistrate desire, to have determined in the first instance in the Supreme Court the question shall be determined in the latter Court, and the proceedings, or such of them as may be required, shall be transmitted to the Supreme Court for the purposes of the determination. — Where a creditor's petition is filed in the Supreme Court, and subsequently the debtor files a declaration of insolvency in the District Court, and the Supreme Court then makes an adjudication, the District Court is without jurisdiction to continue the proceedings on the debtor's petition. — *In re Mackay*, 2 J. R. (N. S.) S. C. (N. Z.) 231.

Transfer of jurisdiction.

Proceedings in District or Magistrate's Court may be transferred to Supreme Court and vice versa. Transfer may be made from one Court in one district to similar Court in another district. Proceedings to be transferred in prescribed manner. On proceedings being transferred Court to have exclusive jurisdiction. Orders, etc., before transfer to have same effect as if originally in Court to which transfer made.

11. 1. Where the creditors resolve, by a special resolution, that it will be more convenient that the bankruptcy proceedings in any District Court or Magistrate's Court should be transferred to the Supreme Court, or where the Judge of a District Court or the Magistrate certifies that in his opinion the bankruptcy would be more advantageously conducted in the Supreme Court, the petition shall be transferred to and all subsequent proceedings thereon had in the Supreme Court. 2. The preceding subsection shall, *mutatis mutandis*, apply to allow of the transfer of any proceedings from the Supreme Court to any District Court or Magistrate's Court having jurisdiction in bankruptcy. 3. Where the creditors by a special resolution resolve that it will be more convenient if the bankruptcy proceedings in the Supreme Court or a District Court or a Magistrate's Court respectively in any district are transferred to the Supreme Court, or to any District Court or Magistrate's Court respectively having jurisdiction in bankruptcy in any other district of such Court respectively, or where the Judge certifies that in his opinion the bankruptcy would be more advantageously conducted in the Supreme Court or in any District Court or Magistrate's Court respectively having jurisdiction in bankruptcy in some other district of such Courts respectively, the petition shall be transferred to and all subsequent proceedings thereon had in the Supreme Court or in such District Court or Magistrate's Court respectively in such other district. 4. Proceedings shall be transferred from one Court to another in such manner as may be prescribed. 5. On proceedings being transferred to any Court that Court shall thenceforth have exclusive jurisdiction in the matter of such proceedings. 6. All orders, affidavits, and proceedings made, used, or taken before the transfer shall have the same effect as if they had originally been orders, affidavits, and proceedings of and in the Court to which the transfer is made.

Powers of Registrars.

Registrar during vacation, etc., to have powers of Judge. Certain powers not vested in Registrar. Power of Judge to delegate powers to Registrar. Registrar's order may be varied by Judge. 12. 1. The Registrar, other than the Clerk of a Magistrate's Court having jurisdiction in bankruptcy, during any vacation, or during the illness or absence from any cause of a Judge of the Court from the place where the offices of the Court are situate, shall have all the powers, jurisdiction and authority of the Court, save as is hereinafter mentioned; and any order made or act done by such Registrar in the exercise of such powers, jurisdiction, and authority shall be deemed the order and act of the Court. 2. A Registrar shall not have power: a) To hold a sitting for the public examination of a bankrupt; b) To grant an order of discharge; c) To commit for contempt of Court; d) To exercise any of the jurisdiction conferred upon the Court by Part XIII. of this Act. 3. A Judge may, by writing under his hand, delegate to the Registrar all or any of his powers in any particular bankruptcy or bankruptcies, except the powers conferred upon the Court by Part XIII. of this Act, and the Registrar shall thereupon have the same power and jurisdiction as the Judge, and an order made by him shall be an order of the Court. 4. Any order made by a Registrar may be discharged or varied by a Judge at Chambers or in Court. — E. 46 & 47 Vic. c. 52, § 99. A Deputy Registrar of the Supreme Court may administer oaths in bankruptcy proceedings. — *In re Scott*, L. R. 2 S. C. (N. Z.) 287. See now § 2, *supra*. To confer jurisdiction on the Registrar it is not necessary that the Judge be absent from the district where the offices of the Court are situate. —

In re Bloomfield, L. R. 3 C. A. (N. Z.) 177. The order of the Registrar may be reviewed by the Judge. — In re Burke, L. R. 4 S. C. (N. Z.) 303. See also *Ex parte Bidgood*, In re Bidgood, 9 L. R. (N. Z.) 725; In re Bloomfield, L. R. 4 S. C. (N. Z.) 356.

Barristers and solicitors.

Barristers and solicitors may practise in Court. Penalty for unqualified person practising as solicitor. 13. 1. Every barrister or solicitor of the Supreme Court shall be and may practise as a solicitor of and in the Court when sitting in bankruptcy, and in matters before Judges or Registrars in Court or in Chambers, and solicitors may appear and be heard without being required to employ counsel. 2. Every person who, not being such barrister or solicitor, practises as a solicitor in the Court sitting in bankruptcy is guilty of a contempt of Court, and is, in addition, liable to the penalty provided in any other Act in respect of practice by unqualified or disqualified persons.

Trial by jury.

Questions of fact may be tried by jury. 14. If in any proceeding in bankruptcy other than in a Magistrate's Court there arises any question of fact which either of the parties desires to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may, if it thinks it a proper question to be tried by a jury, direct such trial to be had with a jury, and such trial may be had accordingly in the Supreme Court in the same manner as if it were the trial of an issue of fact in an action, and in the District Court in the manner in which jury trials in ordinary cases are by law held in District Courts. — E. 46 & 47 Vic. c. 52, § 102 (3). The Court is not bound to order a trial by jury. — In re Bloomfield, L. R. 3 C. A. (N. Z.) 177.

Appeals.

No appeals to lie except in manner directed by Act. 15. The Court shall not be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeals to any other Court lie from its decisions except in manner directed by this Act. — E. 46 & 47 Vic. c. 52, § 102 (2), 104 (2).

How decisions in bankruptcy can be appealed from. 16. Decisions in bankruptcy matters shall be subject to appeal as follows: a) An appeal shall lie from the decision of a District Court or Magistrate's Court to the Supreme Court; b) An appeal shall lie from the decision of the Supreme Court to the Court of Appeal: Provided that, as regards decisions of the Supreme Court on appeal from the District Court or Magistrate's Court, no appeal shall lie except with the leave of the Judge hearing the appeal in the Supreme Court. — E. 46 & 47 Vic. c. 52, § 104.

Time for appeal. No appeal except in accordance with rules. When appeal in respect of omission to exercise discretion. Proceedings not stayed by appeal unless so ordered. Court appealed to may order proceedings to be taken though time has expired. 17. 1. No appeal shall be brought after twenty-one days from the time at which the order embodying the decision appealed from is signed, sealed, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal: Provided that the Court appealed to may, if it thinks fit, allow an appeal to be commenced and prosecuted notwithstanding the expiration of that time. 2. No appeal shall be entertained under this Act except in conformity with the rules of Court relating to appeals. 3. No appeal shall be brought in respect of the omission by the Court appealed from to exercise any discretionary power, unless the Court expressly refused in its judgment, or on application made at the hearing, to exercise such power, in which case the refusal may be made a ground of appeal. 4. Proceedings under this Act shall not be stayed by appeal unless the Court from which the appeal is brought thinks fit to order proceedings to be stayed. 5. The Court appealed to may in any case, either on motion before the hearing of an appeal or when deciding thereon, order any such proceedings to be taken as in the circumstances appear to it proper for the due and convenient prosecution of the proceedings under the bankruptcy, although the time fixed for such proceedings has expired. — E. 46 & 47 Vic. c. 52, § 104 (2), 105 (4), 109. Appeals under the Bankruptcy Act, 1883, § 14, were regulated by the Bankruptcy Rules, and not by the rules of the Court of Appeal. — In re Bloomfield, L. R. 3 C. A. (N. Z.) 298. The appeal is an appeal in the strict sense, and not a rehearing. — In re Reimer, 15 L. R. (N. Z.) 198; In re McGrath, *Ex parte Official Assignee*, 17 L. R. (N. Z.) 646. The grounds of appeal should be stated in the notice, unless the form and matter of appeal has been agreed on. — In re Ell, *Ex parte Austin*

& Haskins, L. R. 4 C. A. (N. Z.) 114. As to extension of time for bringing appeal, see *In re Smith*, Ex parte Stuart, L. R. 1 C. A. (N. Z.) 279. As to leave of appeal to Privy Council, see *In re Ell*, Ex parte Austin & Haskins, L. R. 4 C. A. (N. Z.) 113. As to security for costs of appeal, see *Ell v. Weston*, L. R. 5 C. A. (N. Z.) 120; *In re Ell*, Ex parte Latter, 7 L. R. (N. Z.) 387; *Ell v. Official Assignee*, 7 L. R. (N. Z.) 640. See also *Ex parte McGavin*, *In re Smith*, 6 L. R. (N. Z.) 703.

Procedure.

Court may amend proceedings. Court may extend time for doing anything. Court to have fixed days for bankruptcy sittings. How Court may take evidence. Seal of Court to be used on summonses, etc. Proceedings to be headed "In bankruptcy." 18. 1. The Court may at any time, upon such terms, if any, as it thinks fit, amend all defects and errors in any proceedings, whether there is anything in writing to amend or not, and whether the defect or error is that of the party applying to amend or not. 2. Where by this Act or by the rules the time for doing any act or thing is limited, the Court may extend the time, either before or after the expiration thereof, upon such terms, if any, as it thinks fit to impose. 3. The Court shall, as far as practicable, have fixed days for sitting in bankruptcy, to be appointed by the Judge. 4. Subject to the rules, the Court may in any matter take the whole or any part of the evidence either *viva voce* before the Court, or by written interrogatories, or upon affidavit, or by commission abroad, as the Judge in any case thinks fit. 5. All summonses and processes shall be sealed or stamped with the seal of the Court. 6. Subject to the rules, all bankruptcy matters shall be entitled "In bankruptcy." — E. 46 & 47 Vic. c. 52, § 105.

Rules.

Power to make rules. When rules to take effect. 19. 1. Subject to the provisions of this Act, rules for carrying into effect the objects of this Act may from time to time be made in the manner prescribed by *The Judicature Act, 1908*. 2. All such rules shall take effect from a day, not being earlier than the expiration of one month after the publication of the same in the *Gazette*, to be fixed in and by such rules. — E. 46 & 47 Vic. c. 52, § 127.

Part II. The Official Assignee. Appointment of assignees.

Official Assignee to be appointed for each district. 20. There shall be appointed by the Governor, for each district of the Supreme Court, an Official Assignee or Official Assignees of bankrupts' estates, who shall be officers of the Court: Provided that one person may be appointed for more than one district. — E. 46 & 47 Vic. c. 52, § 66 (1).

Assignee of particular estate. 21. 1. The Governor may, by writing under his hand, appoint a fit person to be deputy of the Assignee in the management of any particular estate, or generally as to any bankrupt estates. 2. Every deputy so appointed shall, with respect to the matters placed under his management, have and may exercise all the powers and duties of an Assignee, and shall receive such remuneration as the Governor in each case by any general rule directs. 3. Every deputy shall act under the control and direction of the Official Assignee of the district. — E. 46 & 47 Vic. c. 52, § 67.

Appointment of acting assignees.

Acting Official Assignee may be appointed. 22. 1. In the event of the illness or temporary absence of the Official Assignee, the Governor may appoint a person to be Acting Official Assignee during such illness or temporary absence, upon such terms as the Governor thinks fit. 2. Any such Acting Official Assignee may exercise all the powers and perform all the duties of the Official Assignee in the name of the Official Assignee. — E. 46 & 47 Vic. c. 52, § 67.

General provisions as to assignees.

Assignees to be paid by salaries or commission. Assignees to have public offices. Appointments to be during Governor's pleasure. Notifications of appointments, etc., in Gazette to be evidence. Assignees to give security. Amount of security may be varied. 23. 1. Assignees shall be paid such salaries as are from time to time appropriated by Parliament for the purpose, or such other remuneration by way of commission on receipts or otherwise as the Governor directs. 2. Every Official

Assignee and Deputy Assignee respectively shall have a public office, open to the public for such hours as are from time to time fixed as the hours of business in the ordinary Government offices. 3. Appointments of Assignees, Deputy Assignees, and Acting Official Assignees respectively may be made from time to time, and shall be held during the pleasure of the Governor. 4. A notice in the *Gazette* of the appointment or of the dismissal or resignation or vacation of office of an Official Assignee or Deputy Assignee, or Acting Official Assignee, respectively, shall be conclusive evidence of the appointment, dismissal, or resignation or vacation of office of the person therein named. 5. Every person so appointed as an Assignee or Deputy Assignee shall give security to the satisfaction of the Minister of Justice for the due performance of his duties, and in such amount as the Minister in each case requires. 6. The Minister of Justice in any case may from time to time vary the amount of the security required from any Assignee or Deputy Assignee, either by diminishing or increasing the amount thereof. — E. 46 & 47 Vic. c. 52, §§ 72, 73, 138; 53 & 54 Vic. c. 71, § 15.

A creditor not to act as Assignee if creditors do not desire it. Office of Assignee vacated on death, etc. No payments allowed in accounts in respect of ordinary duties. 24. 1. A person shall not continue to act as Assignee for any bankrupt estate of which he is a creditor otherwise than as Assignee of the property of any bankrupt, if the creditors by special resolution declare that they do not desire him to continue to act as Assignee thereof; and in such case the Court shall appoint some person, not being a creditor, to be Assignee in the particular matter, who shall give such security for due performance of his duties as the Court requires, and shall have all the powers and perform all the duties of the Official Assignee in regard to that particular estate, and shall be paid such remuneration out of the estate as the Court directs. 2. If an Assignee dies, or becomes incapable of acting, or resigns, or leaves New Zealand for any longer period than three days without the written consent of the Minister of Justice, or becomes bankrupt, he shall *ipso facto* vacate his office, and another shall be appointed in his place. 3. No payments shall be allowed in the accounts of an Assignee in respect of the ordinary duties which are required by or under statute or rules to be performed by him, and no commissions or discounts received by or allowed to an Assignee in respect of sales, advertisements, or otherwise shall be retained by the Assignee for his private use, but shall form part of the assets of the estate in respect of which he received the same. — E. 46 & 47 Vic. c. 52, §§ 72, 73; 53 & 54 Vic. c. 71, § 4.

Official name of Assignee. On appointment of new Assignee, property to pass without conveyance. As to incomplete matters. Seal of office. How Assignee executes documents. 25. 1. The Assignee may sue and be sued by the official name of "The Official Assignee in Bankruptcy of the Property of [*inserting the name of the bankrupt*]," and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagement binding upon himself and his successors in office, carry on the business, and do all other acts necessary or expedient to be done in the execution of his office. 2. In case of the subsequent appointment of an Assignee in the place of an Assignee formerly acting in respect of a bankrupt's estate, whether in consequence of the death, resignation, or dismissal or vacation of office of an Assignee, or in case of the transfer of the proceedings to another Court, the property of the bankrupt shall pass from Assignee to Assignee, and shall vest in the Assignee for the time being during his continuance in office, without any conveyance, assignment, or transfer. 3. All matters and transactions left uncompleted by the former Assignee shall be completed or otherwise dealt with by the new Assignee. 4. The Assignee shall have a seal of office, which shall be kept and used by him, and shall be applicable to all estates of which he has charge. 5. The Assignee shall execute all documents which he has to sign for the purposes of this Act by signing his private name over the official name, as before mentioned, and affixing thereto his seal of office. — E. 46 & 47 Vic. c. 52, §§ 54 (3), 83.

Part III. Proceedings up to Adjudication. Acts of bankruptcy.

Acts of bankruptcy. Assignment to trustees for benefit of creditors. Fraudulent conveyance. Fraudulent preference. Departing from New Zealand, etc., with intent to defeat creditors. Filing debtor's petition. Not paying judgment debt on serving of bankruptcy notice. Giving notice of suspension of payment. Calling meeting of creditors at which debtor is asked to file. Suffering possession to be taken under

execution. Suffering execution on which return of nulla bona is made. Suffering writ of sale to be advertised against land. 26. A debtor commits an act of bankruptcy in each of the following cases: a) If, in New Zealand or elsewhere, he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of all or any of his creditors; b) If, in New Zealand or elsewhere, he makes a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof; c) If, in New Zealand or elsewhere, he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt; d) If, with intent to defeat or delay his creditors, he departs, or attempts to depart, or is about to depart, out of New Zealand, or, being out of New Zealand, remains out of New Zealand, or departs from his dwellinghouse, or otherwise absents himself, or keeps to his house; e) If he files a debtor's petition in bankruptcy; f) If after a judgment has been obtained against him for any amount, execution whereon has not been stayed, he has served on him in New Zealand, or by leave of the Court elsewhere, a bankruptcy notice in the prescribed form requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within seven days after the service of this notice if service is effected in New Zealand, and, if effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counter-claim, set-off, or cross-demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained; g) If he gives notice to any of his creditors that he has suspended or is about to suspend payment of his debts; h) If he calls a meeting of any of his creditors to consider his position, and if a majority in number and value of the creditors present at such meeting, by resolution at such meeting, require him to file a debtor's petition; i) If possession has been taken under execution issued against him or his property on any legal process: Provided that, if the judgment in pursuance of which execution is issued is satisfied within five days after possession has been taken under the execution, the act of bankruptcy shall *ipso facto* be annulled; j) If a return of *nulla bona*, or that no sufficient goods whereon to levy can be found, has been made to any execution issued against him or his property on any legal process; k) If a writ of sale directed against any land of the debtor or any interest therein has been delivered to a Sheriff, and such land or interest has been advertised for sale, in at least one newspaper published or circulating in the town or district in which the land is situated, under such process: Provided that if the judgment in pursuance of which the writ of sale issued is satisfied within five days after the delivery of the said writ of sale to the Sheriff and its advertisement, the act of bankruptcy shall *ipso facto* be annulled. — E 46 & 47 Vic. c. 52, § 4; 53 & 54 Vic. c. 71, § 1. — Where a debtor executed a deed of assignment for the benefit of his creditors, and delivered it to trustees on the condition that it was not to become operative unless signed by all of his creditors, it was held, that as to creditors who signed but were unaware of the condition, the deed became effective at once, and was an act of bankruptcy. — In re Infield, 12 L. R. (N. Z.) 582. If the deed of assignment is delivered to a party interested under it, it is completely made, and can not be regarded as an escrow. — In re Goode, Ex parte Manttan, 13 L. R. (N. Z.) 47. Under subsection f) a judgment for costs is sufficient. — In re Pearson, 13 L. R. (N. Z.) 292. A statement made by the debtor is not within subsection g) unless it conveys to the creditor the idea that the debtor is not paying or will not pay debts out of his present or future assets. — In re Reimer, 15 L. R. (N. Z.) 198. Under subsection j), there must be a return by the sheriff, and an affidavit by the sheriff to the effect that he was unable to find any goods on which to levy, and that he had made no return on the writ of execution in the hope that property might come into the debtor's hands on which a levy might be made, is not sufficient. — In re Meyers, 3 J. R. (N. S.) S. C. (N. Z.) 22. A writ of sale issued by a magistrate under the Contractors and Workmen's Lien Act, 1892, § 40, is not a writ of sale within the meaning of subsection k). — In re Davies, 26 L. R. (N. Z.) 254. For case under subsection i), see In re Scott, L. R. 2 S. C. (N. Z.) 287 (*sed quare*).

General provisions as to petitions.

All proceedings commenced by petition. Petition may be either by debtor or creditor. Where petition may be filed. When debtor resident in New Zealand. When petition against two or more debtors carrying on business in more than one place. When debtor in custody. When debtor absent from New Zealand. When debtor never resident in New Zealand. Where Court has more than one office. Proceed-

ings not invalidated if taken in wrong Court. 27. 1. All proceedings in bankruptcy shall be commenced by a petition filed in the Court. 2. A bankruptcy petition may be filed either by the debtor or by a creditor, and on the filing thereof a fee of six pounds, or such other sum as is from time to time prescribed, shall be paid. 3. A bankruptcy petition shall be filed: a) Where the debtor is resident in New Zealand in the Court for the district wherein he has resided or carried on business for the longest period during the six months immediately preceding the time when the petition is filed; b) Where the petition is by or against two or more persons carrying on business in partnership in more than one place, in the Court for the district wherein any branch of the partnership has been carried on for the longest period during the six months immediately preceding the time when the petition is filed, irrespective of the place of residence of any one or more of the partners; c) Where the debtor is in custody, in the Court for the district wherein he is in custody; d) Where a debtor is absent from New Zealand, or the petitioning creditor can not ascertain the place of his residence, in the Court for the district wherein the debtor has resided for three months, or for the longest time under three months; e) Where a debtor has never been resident in New Zealand, then in the Court for the district within which the petitioning creditor resides or carries on business; f) Where there is more than one office of the Court in the district, in the office nearest the place referred to in paragraphs (a), (b), (c), or (d) of this subsection, as the case may be. 4. Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court; but in such case the Court in which the proceedings have been taken may, on the application of the debtor or any creditor, order the proceedings to be transferred to the Court in which they should have been taken, and thereupon the proceedings shall be transferred in like manner and with the like effect as if consequent upon a resolution of the creditors as set forth in section eleven hereof; and if no such transfer is made the proceedings shall be deemed to have been taken in the proper Court. — E. 46 & 47 Vic. c. 52, § 5. Where a bankruptcy petition by the debtor is filed in a district in which he has not resided or carried on business for the period required by law, the Court of the district in which the petition is filed may nevertheless continue to exercise jurisdiction; the irregularity is waived. — *In re McCallum*, L. R. 1 S. C. (N. Z.) 396. But see now subsection 4, *supra*, which *semble*, is applicable only where proceedings were begun in the wrong court through inadvertence, and an adjudication is made before the want of jurisdiction is brought to the notice of the Court. If such want of jurisdiction is set up in the course of the proceedings the Court should not continue the same. — *In re Wanklyn*, *Ex parte Staples & Co.*, 21 L. R. (N. Z.) 242 (overruling *In re Bowen*, *Ex parte Bing*, *Harris & Co.*, 14 L. R. (N. Z.) 720.

Signature of petitioner, how attested; and identity, how proved. 28. The signature of the petitioning debtor or creditor shall be attested by the Registrar, or by a solicitor or a Justice, or, if the petition is signed out of New Zealand, by a notary public; and the identity of the petitioning debtor or creditor shall be deemed to be proved if the signature of the petitioner to the petition is so attested. — The effect of this section is to dispense with evidence of the identity of the petitioning creditor, provided its terms are complied with. If they are not complied with the Court may receive other evidence of identity. The omission to have the petition attested by a solicitor who was present when it was signed may be rectified under § 167. — *In re Harrison*, 23 L. R. (N. Z.) 864.

Proceedings continued though debtor dies. 29. If a debtor by or against whom a bankruptcy petition is filed dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive. — E. 46 & 47 Vic. c. 52, § 108.

Petition not to be withdrawn without leave. 30. A petition shall not after filing be withdrawn without the leave of the Court. — E. 46 & 47 Vic. c. 52, §§ 7 (7), 8 (2).

Petitions by debtor.

Form and consequences of debtor's petition. 31. A debtor's petition shall be in or to the effect of the form numbered (1) in the second Schedule hereto; and no order adjudging the debtor a bankrupt shall be required thereupon, but the filing of such a petition shall in itself be in all respects equivalent to an order of Court adjudging the debtor a bankrupt; and all terms in this Act, or in any rules thereunder, referring to adjudication and its consequences, shall, where not inconsistent with the context, be deemed to include the case of a debtor becoming bankrupt on his own petition. — E. 46 & 47 Vic. c. 52, § 8 (1).

Effect of filing joint petition. 32. Any two or more persons being partners may file a joint petition, and it shall have the effect of an order of adjudication against them jointly and against each of them separately. — E. 46 & 47 Vic. c. 52, § 115.

Petitions by creditors.

Form of creditor's petition. 33. A creditor's petition shall be in or to the effect of the form numbered (2) in the second Schedule hereto. — A municipal corporation may be a petitioning creditor. — *In re Slater, Ex parte Mayor, etc., of Auckland*, 8 L. R. (N. Z.) 641.

Conditions on which creditor may petition. 34. A creditor shall not be entitled to file a bankruptcy petition against a debtor unless: a) The debt owing from the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to a sum not less than thirty pounds; and b) The debtor, whether before or after incurring such debt, has committed an act of bankruptcy within three months before the filing of the petition; and c) The debt is a liquidated sum payable either immediately or at some certain future time. — *E. 46 & 47 Vic. c. 52, § 6 (1)*. — *Cp. In re Harper, Black & Co., Mac.* (N. Z.) 944; *In re Smith*, L. R. 5 S. C. (N. Z.) 90. The petitioning creditor's claim must be in existence at the date of the alleged act of bankruptcy. — *Wiggins v. Jones*, L. R. 5 S. C. (N. Z.) 295. It may be a claim for money embezzled from him by the debtor. — *In re Herdson*, 2 J. R. (N. S.) S. C. (N. Z.) 221. Or a judgment by confession. — *In re Scott*, L. R. 2 S. C. (N. Z.) 287. Or damages awarded under a divorce decree. — *Thomson v. Thomson*, 11 L. R. (N. Z.) 483. Or a judgment awarding scale costs. — *In re Phillips & Nugherer*, 13 L. R. (N. Z.) 639.

Where petitioner is a secured creditor. 35. If the petitioning creditor is a secured creditor he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudicated a bankrupt, or give an estimate of the value of his security; and in the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated. — *E. 46 & 47 Vic. c. 52, § 6 (2)*. This was unnecessary under the Debtor's and Creditor's Act, 1876. — *In re Mackay*, 2 J. R. (N. S.) S. C. (N. Z.) 150.

Petition, how verified. 36. A creditor's petition shall be verified by affidavit of the creditor or of some person having knowledge of the facts, and filed in the Court. — *E. 46 & 47 Vic. c. 52, § 7 (1)*. — The petition must be verified by affidavit. — *In re Mackay*, 2 J. R. (N. S.) S. C. (N. Z.) 150. If not verified the defect is not one that can be amended or rectified under § 167. — *In re Nicol*, 22 L. R. (N. Z.) 129.

On filing petition summons to issue to debtor. Summons and petition to be served on debtor. To be served also on trustees of assignment for benefit of creditors. 37. 1. On the filing of a creditor's petition in the Court, a summons shall be issued out of such Court calling upon the debtor to appear before such Court on some convenient day appointed by the Registrar, and show cause why he should not be adjudged bankrupt. 2. A copy of such summons and petition shall forthwith be served upon the debtor, either personally or in such other mode as is prescribed or is in any particular case directed by the Court. 3. If the act of bankruptcy alleged is that the debtor has made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally, a copy of such summons or petition shall also be served on such trustee or trustees, and if it appears to the Court that it will be for the advantage of the creditors that the estate should be administered under the said deed, the Court may order that the execution of the deed shall not be deemed, to be an act of bankruptcy, and that the estate shall be administered thereunder, and may dismiss the petition and make such order as to costs as it deems fit, and such costs if made payable to the petitioner may be ordered to be paid out of the estate. — The service of the summons and petition may be made on the debtor while he is attending a sitting of a court. — *In re Ell, Ex parte Austin & Haskins*, L. R. 4 C. A. (N. Z.) 114. Under subsection 3 the question is not whether the assignment when made was more beneficial to the creditors than the bankruptcy would have been, but whether at the time of the petition a bankruptcy would be at least as advantageous as an administration under the deed of assignment. — *In re Matheson, Ex parte Hallett*, 18 L. R. (N. Z.) 556. Subsection 3 does not authorize the Court to order an administration under a deed of assignment where other acts of bankruptcy were committed prior to the date of the deed of assignment. — *In re Bowen, Ex parte Bing, Harris & Co.*, 14 L. R. (N. Z.) 720.

Persons may be summoned to give evidence on petition. 38. The Court may, at any time before such summons is disposed of, summon before it and examine any person who is stated by affidavit to be capable of giving information concerning any act of bankruptcy alleged to have been committed by the debtor, and may require any person so summoned to produce any books and documents in his custody, possession, or power. — *E. 46 & 47 Vic. c. 52, § 27*.

Court, if satisfied, may adjudge debtor bankrupt. 39. If the Court, after hearing the evidence adduced by and on behalf of all parties, is satisfied that the copy summons and petition have been duly served, that the debtor has committed an act of bankruptcy within the time before mentioned, whether or not the act of bankruptcy proved is the same as the act of bankruptcy stated in the petition, and that the debtor is indebted to the petitioner or petitioners in the sum of thirty pounds and upwards, then the Court may adjudge the debtor bankrupt. — E. 46 & 47 Vic. c. 52, § 7 (2). — The words "may adjudge" are imperative, and when an act of bankruptcy is shown the Court must adjudicate the debtor a bankrupt. — *In re Mackay*, 2 J. R. (N. S.) S. C. (N. Z.) 150. This case was explained, and it was held that on equitable grounds the Court may refuse to make an adjudication. — *Ex parte Coleman*, *In re Cooper*, L. R. 1 C. A. (N. Z.) 301. But ordinarily a very strong case must be made out by the debtor to warrant a Court in refusing to make the adjudication where an act of bankruptcy has been committed. — *In re Brown*, *Ex parte Middleton*, L. R. 2 S. C. (N. Z.) 189; *In re Ell*, L. R. 4 C. A. (N. Z.) 114. An equitable ground for a refusal to make an adjudication is the circumstance that the petition is founded upon a debt purchased by the petitioning creditor not for the purpose of recovering it, but in order to stifle and delay the prosecution of a suit pending by the debtor against the petitioning creditor. — *Ex parte Coleman*, *In re Cooper*, L. R. 1 C. A. (N. Z.) 301; see also *In re Ell*, L. R. 3 S. C. (N. Z.) 43. Or the existence of an equitable set-off against the petitioning creditor's claim. — *In re Burke*, L. R. 4 S. C. (N. Z.) 303; *In re Slater*, 8 L. R. (N. Z.) 404. But where the basis of the creditor's petition is a judgment debt, and it is found that the result of an action brought by the debtor against the creditor can not affect the judgment, the order will be made. — *In re Humphrey's*, 8 L. R. (N. Z.) 421 (distinguishing *In re Burke*, L. R. 4 S. C. [N. Z.] 303 and *In re Slater*, 8 L. R. [N. Z.] 404). Where the petition for adjudication is made by several creditors the fact that an equitable ground for refusing such an adjudication exists as to one of them is not a sufficient ground for refusing to make the order. — *In re Ell*, *Ex parte Austin & Haskins*, L. R. 4 C. A. (N. Z.) 114. After the petition is filed the petitioning creditor may refuse to accept payment of the debt that forms the basis of the petition. — *In re Ell*, *Ex parte Austin & Haskins*, L. R. 4 C. A. (N. Z.) 114. For a case where, under the facts, it was deemed proper to make an order of adjudication, although the estate was being administered in a satisfactory manner under a deed of assignment, and no advantage as regards dividends could be expected from an administration under the Bankruptcy Act, see *In re Stephens*, *Ex parte Dalton*, 23 L. R. (N. Z.) 218.

Court, if not satisfied, may dismiss petition. 40. If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the summons and petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition. — E. 46 & 47 Vic. c. 52, § 7 (3).

When petition founded on non-compliance with bankruptcy notice, proceedings may be stayed if judgment appealed against. 41. When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment. — E. 46 & 47 Vic. c. 52, § 7 (4).

On certain conditions Court may stay proceedings on petition. 42. Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security, if any, being given as the Court requires for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as is required for trial of the question relating to the debt. — E. 46 & 47 Vic. c. 52, § 7 (5).

When proceedings stayed, Court may adjudicate on petition by other creditor. 43. Where the proceedings are stayed, the Court may, if by reason of the delay caused by the proceedings, or for any other cause it thinks just, make an order of adjudication on the petition of some other creditor, and shall thereupon dismiss on such terms as it thinks just the petition on which proceedings have been stayed as aforesaid. — E. 46 & 47 Vic. c. 52, § 7 (6).

At any time after filing of petition and before adjudication, Court may appoint Assignee receiver. At any time after filing petition, Court may stay actions, etc., against debtor. 44. 1. The Court may if it thinks fit, on the application of any creditor, at any time after the filing of a creditor's petition against a debtor, and before adjudication, appoint the Official Assignee to be the receiver and manager of the debtor's estate, or of any part thereof, and direct him to take immediate

possession of his property or business, or any part thereof; and, upon notice of such order being advertised, all proceedings to recover any debt provable under the petition shall be stayed; but the Court may, on application by any creditor or person interested, allow any proceedings commenced to be continued on such terms and conditions as it thinks fit. 2. The Court may, at any time after the filing of a bankruptcy petition, stay any action, execution, or other legal process against the property or person of the debtor; and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been filed by or against the debtor, either stay the proceedings or allow them to continue on such terms as it thinks fit. — E. 46 & 47 Vic. c. 52, § 10.

If two petitions filed, Court may consolidate proceedings. 45. Where two or more bankruptcy petitions are filed against the same debtor, or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as it thinks fit. — E. 46 & 47 Vic. c. 52, § 106.

If petitioner not proceeding with due diligence, other creditor may be substituted as petitioner. 46. Where the petitioner does not proceed with due diligence on his petition the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor. — E. 46 & 47 Vic. c. 52, § 107.

Proceeding on petition may be stayed. 47. The Court may at any time make an order staying the proceedings under a bankruptcy petition either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks fit. — E. 46 & 47 Vic. c. 52, § 109.

Creditor of a firm may petition against one or more partners. 48. Any creditor, whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm, may file a petition against any one or more partners of the firm without including the others. — E. 46 & 47 Vic. c. 52, § 110.

Petition may be against firm in partnership name. 49. A petition may be filed against any one or more persons carrying on business in the name of a firm under the name of such firm, to be served in such mode as the Court directs; but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm, or the name of such person, to be disclosed in such manner and verified on oath or otherwise as the Court directs. — E. 46 & 47 Vic. c. 52, § 115. Where all members of the partnership severally become bankrupt no joint adjudication against the firm is necessary. — *In re Siegert*, 6 L.R. (N.Z.) 257. *Semble*, there can be no adjudication of bankruptcy against a partnership that has ceased to exist. — *In re Quinlan & Foster*, 26 L.R. (N.Z.) 513.

If more respondents than one to petition, it may be dismissed against one or more. 50. Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition as against the other or others of them. — E. 46 & 47 Vic. c. 52, § 111.

General as to adjudication.

Date of adjudication. 51. The date of the filing of a debtor's petition, or the date of the order of the Court adjudging a person to be a bankrupt on a creditor's petition, shall be the date of the adjudication for the purposes of this Act. — E. 46 & 47 Vic. c. 52, § 9 (1).

Registrar to give notice to Assignee. Notice of adjudication to be advertised. 52. 1. The Registrar, immediately upon adjudication, shall give notice thereof to the Assignee. 2. Notice of every adjudication, and of the date thereof, shall in every case forthwith be advertised by the Assignee. — E. 46 & 47 Vic. c. 52, §§ 13, 20.

Upon adjudication property to vest in Assignee. Proceedings to recover debts stayed. No executions, etc., to be available. No distress to be levied. Rights of local bodies to recover rates not prejudiced. 53. 1. Upon adjudication, all the property of the bankrupt, whatsoever and wheresoever situate, shall vest in the Official Assignee of the Court in which the order of adjudication was made, as such Official Assignee: Provided that if the proceedings are transferred to another Court, or to the same Court in another district, the said property shall (without prejudice to any disposition thereof made by the Assignee before such transfer) pass to the Assignee of the Court to which the transfer is made, who shall thereafter be the Official Assignee of the property of the said bankrupt. 2. Upon the adjudication being advertised, all proceedings to recover any debt provable under the bankruptcy

shall be stayed; but the Court may, on application by any creditor or person interested, allow any proceedings commenced to be continued, on such terms and conditions as it thinks just. 3. Upon the adjudication being advertised, no execution, attachment, or other process against the debtor's property in respect of any debt provable under the bankruptcy, and no process against his person in respect of any debt provable under the bankruptcy, other than such process as may be had against a debtor about to depart out of New Zealand, shall be available without leave of the Court. 4. Upon the adjudication being advertised, no distress for rent due by the bankrupt shall be levied, but, if previously levied, may be proceeded with. 5. Nothing in this Act shall prejudice or affect the right of any local authority to recover judgment for rates against any bankrupt, and to enforce payment of the same by selling or leasing the land in respect of which such rates are payable, in accordance with the provisions of any Act relating to rates and the recovery thereof. — E. 46 & 47 Vic. c. 52, § 9 (1), 42 (1). — Cf. §§ 120, *infra*. For cases under the Bankruptcy Acts of 1883 and 1884, see *Official Assignee v. Brown*, L. R. 3 S. C. (N. Z.) 152; *In re Krull*, L. R. 3 S. C. (N. Z.) 428. See also *MacDonald v. Stewart*, O. B. & F. (S. C.) (N. Z.) 177; *In re Graham*, *Ex parte Wise*, L. R. 1 S. C. (N. Z.) 285; *Heeles v. Creditors' Trustee of Sansom*, O. B. & F. (S. C.) (N. Z.) 196.

Order of adjudication to be final, and not liable to be impeached. 54. The order of adjudication shall be final and conclusive with respect to the validity of the adjudication and to the existence of all requisites thereto; and the order shall not be liable to be disturbed or impeached at law or in equity, or otherwise, on any ground whatever, nor shall any of the requisites to adjudication be disputed or required to be proved in any action, suit, or proceeding.

Bankruptcy to date back to act of bankruptcy. 55. The bankruptcy of a debtor, if the same takes place on the petition of a creditor, shall be deemed to have relation back and to commence at the time of the act of bankruptcy on which the order is made adjudging him a bankrupt, or, if the same takes place upon the debtor's own petition, to have relation back to and to commence at the time of the filing of the petition; but in either case, or if the bankrupt is proved to have committed more acts of bankruptcy than one, the bankruptcy shall have relation back to and commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceeding the order of adjudication, or time of filing, as the case may be: Provided that the bankruptcy shall not relate to any prior act of bankruptcy, unless it is that at the time of committing such prior act the bankrupt was indebted to some creditor in a sum sufficient to support a petition in bankruptcy, and unless such debt is still remaining due at the time of the adjudication. — E. 46 & 47 Vic. c. 52, § 43. — Under the Debtors and Creditors Act, 1876, it was disputed whether the doctrine of relation back applied, especially in the case of a debtor's declaration. — *Cp. In re Mackay*, 2 J. R. (N. S.) (N. Z.) 231; *In re Beck & Tonks*, *Ex parte Williams*, O. B. & F. (C. A.) (N. Z.) 100; *Morris v. McNeil*, O. B. & F. (S. C.) (N. Z.) 55; *Whittaker v. Denniston*, L. R. 1 S. C. (N. Z.) 311. Under the Bankruptcy Act, 1883, the doctrine of relation back applies. — *Bower v. Official Assignee*, 13 L. R. (N. Z.) 193. Where necessary the Court may inquire into the question as to the exact time of the day when the filing took place. — *In re McLeod*, 10 L. R. (N. Z.) 422. See also *In re Smith*, L. R. 5 S. C. (N. Z.) 90; *In re Jackson*, *Ex parte Official Assignee*, 6 L. R. (N. Z.) 392; *In re Baldwin*, *Ex parte Official Assignee*, 7 L. R. (N. Z.) 636; *Official Assignee v. Chick*, 9 L. R. (N. Z.) 622; *In re Marsh*, 12 L. R. (N. Z.) 456.

On return of judgment summons no order to be made if debtor bankrupt. If adjudication after order of committal, such order shall not issue. If judgment debtor arrested, he shall be discharged on proof of adjudication. 56. 1. Where a judgment debtor, on the return of a judgment summons, under *The Imprisonment for Debt Limitation Act, 1908*, proves that he has been adjudicated a bankrupt, and that the debt is provable in the bankruptcy, no order of committal shall be made. 2. Where a judgment debtor, after the making of an order of committal against him under the last mentioned Act, files in the Court in which the order was made an affidavit stating that he has been adjudicated a bankrupt, and that the debt was provable in the bankruptcy, annexing to such affidavit a certificate of the Registrar certifying to the fact of adjudication, and shall forthwith upon such affidavit being so filed give notice to the judgment creditor of the filing thereof, such order of committal shall not issue, and if issued and not executed shall be recalled. 3. Where a judgment debtor is arrested, he may file in the Court upon whose warrant of committal he has been arrested an affidavit as mentioned in the last preceding

subsection, and give the notice to the judgment creditor thereof as therein required, and thereupon the judgment debtor shall be discharged out of custody upon the certificate of the Registrar or Clerk of the Court upon whose warrant of committal he was arrested. — E. 46 & 47 Vic. c. 52, § 44. — This section is an absolute bar to further proceedings under the Imprisonment for Debt Limitation Act, 1908. — In re Watkinson, Ex parte Wilson, 11 L. R. (N. Z.) 810 (doubting In re Mills, 9 L. R. [N. Z.] 289). And the debtor is ordinarily entitled to discharge from custody. — In re Cooke, 8 L. R. (N. Z.) 465. Unless there is fraud. — In re Doubleday, 6 L. R. (N. Z.) 199; In re Hawkins, 11 L. R. (N. Z.) 137 (distinguishing In re Baré, 10 L. R. [N. Z.] 219). Or other sufficient ground. — McKillop v. Valentine, 11 L. R. (N. Z.) 678. For a case decided before the Imprisonment for Debt Abolition Act, 1874, see McGregor v. Osborne, L. R. 2 C. A. (N. Z.) 12.

Part IV. Supervisors.

Creditors may appoint supervisors. Remuneration of supervisors. Resignation of supervisors. Supervisorship vacated on bankruptcy. Removal of supervisors. Vacancies in supervisorship, how filled up. Meetings of supervisors. Supervisors to act by majority. Absence from three meetings to vacate office. Continuing supervisors may act notwithstanding vacancy. 57. 1. At the first general meeting of creditors, or at any subsequent meeting, the creditors may by resolution appoint one or more fit persons, being creditors qualified to vote at the meeting, or the holders of general proxies from such creditors, to be a supervisor or supervisors for the purpose of superintending the administration of the bankrupt's property by the Assignee. 2. The creditors may determine what remuneration shall be paid out of the estate to the supervisor or supervisors for their services, but so that the sum to be paid to them shall not exceed the scale set forth in the third Schedule hereto. 3. Any supervisor may resign his office by notice in writing signed by him and delivered to the Assignee. 4. If a supervisor becomes bankrupt his office shall thereupon become vacant. 5. Any supervisor may be removed by an ordinary resolution at any meeting of creditors, of which seven days' notice has been given, stating the object of the meeting. 6. On a vacancy occurring in the office of supervisor, the Assignee may summon a meeting of creditors for the purpose of filling the vacancy; and the meeting may by resolution appoint another creditor, or other person eligible as aforesaid, to fill the vacancy. 7. The supervisors, if more than one, shall meet at such times as they from time to time appoint, and the Assignee, or one of the supervisors, may also call a meeting of the supervisors as and when he thinks necessary. 8. The supervisors, if more than one, may act by a majority present at a meeting, but shall not act unless a majority of them are present at a meeting. 9. When a supervisor, if there are more than one, is absent from three consecutive meetings, his office shall thereupon become vacant. 10. The continuing supervisors may act notwithstanding any vacancy in their body. — E. 46 & 47 Vic. c. 52, § 22; 53 & 54 Vic. c. 71, § 5.

Part V. Duties of Bankrupt.

Bankrupt to file statement of affairs. Statement to be verified. Creditors may inspect statement. Other persons may inspect statement. 58. 1. The bankrupt shall, within three days after adjudication, make out and deliver to the Assignee at his public office a statement showing the particulars of the bankrupt's assets, debts, and liabilities, the names, residences, and occupations of his creditors, and the securities held by them respectively, and he may from time to time add to or amend such statement. 2. Every such statement, addition, and amendment shall be verified by the bankrupt by affidavit. 3. Any person claiming in writing to be a creditor of the bankrupt may, personally or by agent, inspect this statement at all reasonable times, and take any copy thereof or extract therefrom; but any person untruthfully so claiming to be a creditor shall be guilty of a contempt of Court. 4. Any other person may, on payment of a fee of one shilling, inspect this statement at all reasonable times and take any copy thereof or extract therefrom. — E. 46 & 47 Vic. c. 52, § 16.

Bankrupt to give up books, etc., to Assignee. Bankrupt to make out balance-sheets, etc., for three years past. 59. 1. Immediately upon adjudication the bankrupt shall deliver up to the Assignee, at his public office, all books of account, papers, deeds, instruments, and writings relating to his estate in his custody or power, and discover such as are in the custody or power of any other person; and

shall furnish from time to time such information and particulars as are necessary to enable the Assignee or any person employed by him to prepare the bankrupt's balance-sheet of his estate. 2. The bankrupt shall, if required by the Assignee, or by the supervisors, or by resolution of the creditors, within a reasonable time after receiving notice of such requisition, prepare and deliver to the Assignee, at his public office, full, true, and particular accounts and balance-sheets, showing the particulars of his receipts and expenditure, of his stock-takings, and of his proofs and losses during any period not being earlier than three years before the commencement of the bankruptcy, and for this purpose he shall have full access to all his books and papers in the possession of the Assignee, and, if necessary in the opinion of the Assignee, he shall have the assistance of an accountant at the expense of the estate.

Bankrupt to aid in realisation. To give inventories, etc. Submit to examinations. Attend meetings. Execute deeds, etc. Submit to examination at meetings. Do things to enable life to be insured. 60. The bankrupt shall to the utmost of his power aid in the realisation of his property, and the distribution of the proceeds amongst his creditors; and, more particularly, shall: a) Give such inventory of his property, and such list of his creditors and debtors, and of the debts due to and from them respectively, as the Assignee at any time requires; b) Submit to such examination, on oath or not, in respect of his property or his creditors as the Assignee requires, and sign a written statement of his evidence in such examination, if required by the Assignee; c) Attend all meetings of his creditors unless he is in custody, unless prevented by sickness or other cause satisfactory to the meeting, and wait on the Assignee whenever requested so to do; d) Execute such powers of attorney, conveyances, transfers, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as are required by the Assignee, or prescribed by the rules, or directed by the Court by any special order made in reference to any particular bankruptcy, or on any special application by the Assignee or any creditor; e) At the first and other meetings of his creditors submit to such examination, on oath or not, as the Assignee or the meeting requires, and sign a written statement of his evidence on such examination if required by the Assignee; f) Submit to medical examination, if required by the Assignee, and do any other act, deed, matter, or thing needful to enable his life to be insured for the benefit of his creditors. — E. 46 & 47 Vic. c. 52, § 24.

Part VI. Administration of Bankrupt's Property.

Property passing to assignee.

Property divisible amongst creditors. Property vested or acquired before discharge. Capacity to exercise powers. Goods in order and disposition of bankrupt. Property held in trust not to pass to Assignee. 61. The property of the bankrupt passing to the Assignee and divisible amongst his creditors shall comprise the following particulars: a) All property belonging to or vested in the bankrupt at the commencement of the bankruptcy, or acquired by or devolving upon him before his discharge; b) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of the bankruptcy or before his discharge; c) Any goods, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt by the consent and permission of the true owner, under such circumstances that the bankrupt is the reputed owner thereof: Provided that this paragraph shall not: i) Affect any transfer or assignment of any ship, or any share thereof, made as a security for any debt by way of mortgage duly registered according to the enactments relative to the registration of ships for the time being in force; or ii) Prejudice or affect any *bona fide* instrument affecting goods duly registered under any Act providing for the registration thereof; or iii) Apply to consignments of goods held by the bankrupt in the ordinary course of his business for sale on account of any other person, the identity and ownership of which can be proved to the satisfaction of the Assignee or of the Court, and in respect of which the owner tenders payment to the Assignee of all advances made thereon by the bankrupt, and of all charges due thereon to the bankrupt's estate, and surrenders to the Assignee any acceptances granted by the bankrupt in his

favour by way of advances thereon; d) Notwithstanding anything in this Act, property held by the bankrupt in trust for any other person shall not pass to the Assignee. — For an application of subsection c, see *Bank of New South Wales v. Cook*, 12 L. R. (N. Z.) 545; *In re Kilgour*, 6 L. R. (N. Z.) 301; *Bower v. Official Assignee*, 13 L. R. (N. Z.) 193; *Bower v. Official Assignee*, 13 L. R. (N. Z.) 203; *Official Assignee v. Slattery*, 16 L. R. (N. Z.) 332; *In re Brick, Official Assignee v. Brick*, 18 L. R. (N. Z.) 496; *In re Islip, Ex parte Official Assignee*, 26 L. R. (N. Z.) 1293. As to the admission of evidence to show a custom of trade to rebut the presumption of ownership arising from possession, under subsection c, see *Gee v. Latter*, L. R. 3 S. C. (N. Z.) 378 (goods left in timber yard); *Hoffman v. Macfarlane*, 2 J. R. (N. Z.) 82 (hired piano); *In re Ryley, Ex parte Swanwick*, 15 L. R. (N. Z.) 325 (flour left in mill).

Court may order bankrupt to pay sum towards debts. 62. If, at any time before the date of an absolute order of discharge, or before the taking effect of a conditional order of discharge, it is shown to the satisfaction of the Court, either by the signed statements of the examination of the bankrupt or other persons before the Assignee, or by affidavit, or by the evidence of witnesses taken by the Court on the hearing of the application, that a bankrupt, after a reasonable allowance for the maintenance of himself and his family, and the payment of debts, claims, and demands not provable under the bankruptcy, is able, from any source, to pay any sum towards the discharge of debts provable under the bankruptcy, the Court, after hearing any evidence which the bankrupt may tender, or, in case of his non-appearance, upon proof that he was served with notice of the application at least three days before the day of hearing, may make an order to the effect that, within a time therein specified, the bankrupt shall pay to the Assignee such sum towards the discharge of debts provable under the bankruptcy as the Court is satisfied the bankrupt is able to pay as aforesaid. — E. 46 & 47 Vic. c. 52, § 53. — For case where an order was made directing payment of a portion of a pension payable to the bankrupt, see *In re Martin*, 2 J. R. (N. S.) S. C. (N. Z.) 43.

General powers of assignee in administration.

Assignee empowered to do following things: Sell property. Give receipts and discharges for money. Claim dividends. Exercise powers. Carry on business of bankrupt. Bring or defend action. Employ solicitor or expert. Take security for purchase-money. Mortgage bankrupt's property. Refer disputes to arbitration. Compromise with creditors. Compromise claims arising out of bankrupt's property. Divide debtor's property in its existing form. Appear in Court. Administer oaths. Appoint agent or attorney. 63. Subject to the provisions of this Act the Assignee may do all or any of the following things: a) Sell, on such terms and conditions in all respects as he thinks fit, all or any part of the property of the bankrupt by public auction or public tender, with power to buy in at any such auction, or to rescind or vary any contract for sale on such terms as the Assignee thinks fit, with power also to sell the whole thereof to any person, or to sell the same in parcels; and in the case of perishable property, or any property offered for sale by public auction or public tender and not sold, to sell the same by private contract in one or more lots: Provided that except in the case of perishable property, or any property the sale of which in the opinion of the Assignee from any cause might be prejudiced by the delay, none of the property of the bankrupt shall be sold until after the date fixed for the first meeting of creditors; Where a document is made or executed in professed exercise of the power to sell conferred by this section, the title of any person acquiring title thereunder shall not be impeachable except on the ground of fraud, or be affected on the ground that no cause had arisen to authorise the sale, or that the power was otherwise improperly or irregularly exercised; b) Give receipts and execute reconveyances, discharges, and releases for any money received by him, which receipts, reconveyances, discharges, or releases shall effectually discharge the person paying the money from all responsibility in respect of the application thereof; c) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt; d) Exercise any powers the capacity to exercise which is vested in the Assignee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying the provisions of this Act into effect; e) Carry on the business of the bankrupt as far as is necessary or expedient for the beneficial winding-up of the same; f) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt, and also, with the leave of the Court in which any action was commenced by the debtor before adjudication, continue such action in his own name;

g) Employ a solicitor or other expert to take any proceedings or do any business; h) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such conditions as to security and otherwise as the Assignee thinks fit; i) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money to be applied in any way in which he might apply money raised by sale of any part of the property of the bankrupt; j) Refer any dispute to arbitration, compromise all debts, claims, and liabilities whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as are agreed upon; k) Make such compromise or other arrangements as are thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy; l) Make such compromise or other arrangements as are thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the Assignee by any person or by the Assignee on any person; m) Divide in its existing form amongst the creditors according to its estimated value any property which from its peculiar nature or other special circumstances can not readily or advantageously be sold; n) Appear in Court and examine the bankrupt in any proceedings; o) Administer oaths and take declarations for any purposes under this Act; p) From time to time appoint an agent or agents by power of attorney or otherwise to act for him, either in or out of New Zealand, in respect of any particular estate or estates, and delegate to such agent or agents all or any of the powers hereby conferred upon the Assignee in respect of such estate or estates or of any bankrupt, and from time to time revoke any such appointment; and fix the remuneration of such agent, which shall be paid out of the estate: Provided that the powers hereby conferred upon the Assignee shall be in furtherance of and not in limitation of all other powers in anywise vested in him. — E. 46 & 47 Vic. c. 52, §§ 56, 57.

Assignee to have regard to directions of creditors or supervisors. Assignee to use his own discretion. 64. 1. Subject to the provisions of this Act, the Assignee shall, in the administration of the property of the bankrupt and in the distribution thereof among his creditors, have regard to any directions given by resolution of the creditors at any general meeting, or by the supervisors; and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the supervisors. 2. Subject to the provisions of this Act the Assignee shall use his own discretion in the management of the estate and its distribution among the creditors. — E. 46 & 47 Vic. c. 52, § 89 (1, 4).

Assignee may obtain direction of Court. Assignee acting upon direction deemed to have discharged his duty. 65. 1. The Assignee may apply to the Court, upon a statement in writing, verified by affidavit, for the opinion, advice, or direction of the Court on any question respecting the management of the estate, and notice of such application shall be served upon, and the hearing thereof may be attended by, all persons interested, or such of them as the Court thinks expedient. 2. The Assignee, acting upon the opinion, advice, or direction of the Court, shall be deemed to have discharged his duty in the subject-matter of the application, provided that he has not been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction. — E. 46 & 47 Vic. c. 52, § 89 (3). — The question as to the rights of the creditors to a fund claimed by a third party is not one affecting the management of the estate, within the meaning of subsection 1. — *Ex parte Official Assignee of Pearson*, 13 L. R. (N. Z.) 292.

Appeal from decision of Assignee. 66. If the bankrupt, or any of the creditors, or any other person is aggrieved by any act or decision of the Assignee, he may, within thirty days from the date of such act or decision, apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just. — E. 46 & 47 Vic. c. 52, § 90.

Miscellaneous provisions as to administration of the estate.

Bankrupt not to recover or release property. 67. After adjudication, neither the bankrupt nor any person claiming through or under him shall have power to recover any property, or to make any release or discharge thereof, nor shall the same be attached for any debt of the bankrupt by any person, and the Assignee for the

time being shall have the like remedy to recover the same in his official name as the bankrupt himself might have had if he had not been adjudicated a bankrupt.

Bankrupt not to execute powers of appointment. 68. A bankrupt after adjudication shall not execute, whether before or after he obtains his discharge, any power of appointment, or any other power vested in him, so as to defeat or destroy any contingent or other estate or interest in any property to which he may be beneficially entitled at any time before his discharge, in default of appointment or otherwise in case of non-execution of the power.

Court may order person admitting indebtedness to bankrupt to pay debt. 69. If any person on examination under the provisions of this Act admits that he is indebted to the bankrupt, the Court may at any time thereafter, on application of the Assignee, and on proof that such person refuses to pay the amount admitted to be owing by him to the Assignee, order him to pay to the Assignee, at such time and manner as the Court thinks expedient, the amount admitted or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without the costs of the order. — E. 46 & 47 Vic. c. 52, § 27 (4).

Bankrupt or other person may be appointed to manage estate or carry on business. 70. The Assignee may, but with the sanction of the supervisors, if any, appoint the bankrupt himself, or any other person whom he thinks fit, to superintend the management of the estate or to carry on the trade or business of the bankrupt on behalf of the creditors, and in all or any other respects to aid in administering the bankrupt's estate and effects in such manner and on such terms, whether as to payment for his services or otherwise, as the Assignee and the supervisors, if any, think best for the benefit of the creditors. — E. 46 & 47 Vic. c. 52, § 64 (1).

Assignee may, with consent of creditors, make allowance to bankrupt. 71. The Assignee may from time to time, with the consent of the creditors expressed by resolution, make such allowance as he thinks just to the bankrupt out of his property for the support of the bankrupt and his family; but any such allowance may be reduced by the Court on the application of any creditor. — E. 46 & 47 Vic. c. 52, § 64 (2).

When partners adjudicated distinct accounts to be kept of joint estates and separate estates. 72. Under every adjudication made against two or more persons jointly, distinct accounts shall be kept by the Assignee of the joint estate and also of the separate estate of each bankrupt; and the joint estate shall be applied in the first place in satisfaction of the debts due by the bankrupts jointly, and the separate estate shall be applied in the first place in satisfaction of the debts of the separate creditors; and in case there is a surplus of the separate estate, such surplus shall be carried to the account of the joint estate; and in case there is a surplus of the joint estate, such surplus shall be carried to the account of the separate estate of each bankrupt in proportion to the right and interest of each bankrupt in the joint estate. — E. 46 & 47 Vic. c. 52, § 59.

Court may authorise Assignee to commence action in name of Assignee and bankrupt's partner. 73. When a member of a partnership is adjudged bankrupt, the Court may authorise the Assignee to commence and prosecute any action in the names of the Assignee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs. — E. 46 & 47 Vic. c. 52, § 113.

When bankrupt a contractor jointly with other persons they may sue without joining bankrupt. 74. When a bankrupt is a contractor in respect of any contract jointly with any person, such person may sue or be sued in respect of the contract without the joinder of the bankrupt. — E. 46 & 47 Vic. c. 52, § 114.

Effect of bankruptcy on antecedent transactions.

Settlements, when void. 75. Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a pur-

chaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife: a) Shall, if the settlor is adjudicated a bankrupt under this Act within one year after the date of such settlement, be void as against the Assignee; b) And shall, if the settlor becomes bankrupt at any subsequent time within three years after the date of the settlement be void as against the Assignee, unless the parties claiming under such settlement prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in such settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof. — E. 46 & 47 Vic. c. 52, § 47 (1). — This section applies only to voluntary settlements, not to conveyances made in good faith and for valuable consideration. The release of a real debt owing by the husband to the wife is a good consideration. — *Trustee of Bray v. Cant*, L. R. 2 C. A. (N. Z.) 39; *In re McGrath*, Ex parte Official Assignee, 17 L. R. (N. Z.) 646. As to burden of proof, see *Dickison v. Munro*, 2 J. R. (N. S.) S. C. (N. Z.) 183; Ex parte Official Assignee, *In re Hood*, 7 L. R. (N. Z.) 337; Ex parte Benjamin & Jacobs, *In re Benjamin & Jacobs*, 10 L. R. (N. Z.) 110. See further, *In re McLeod*, L. R. 3 S. C. (N. Z.) 223; *In re Saggars*, Ex parte Official Assignee, L. R. 4 S. C. (N. Z.) 382; *In re Kinley*, Ex parte Official Assignee L. R. 4 S. C. (N. Z.) 385.

Proceedings where bankrupt has erected buildings, etc., on wife's land. 76. 1. An Assignee may, by summons, apply to a Judge in any case in which a husband has, within two years before the date of adjudication, erected buildings upon or otherwise improved land of his wife, or has purchased land in her name, or provided money to purchase land in her name or on her behalf. 2. The Judge may, upon hearing such summons, ascertain the value of the improvements, or the amount expended or paid upon or for such land, by or on behalf of the husband, and may order the wife to pay the amount so ascertained to the Assignee. 3. In case the wife fails to comply with such order, the Judge, by the same or a subsequent order, may direct the Assignee to sell such land with the improvements thereon, or a sufficient part thereof, and to convey or transfer the same to the purchaser; and the Judge may make all vesting or other orders necessary for that purpose. 4. The Assignee shall retain the whole or so much of the amount so ascertained as is sufficient, along with any other assets in the estate, to pay twenty shillings in the pound to the creditors of the husband, and the whole of the balance of such proceeds shall be paid to the wife or for her benefit. 5. On any such application evidence may be given either orally or on affidavit, or partly in both such ways, and on any appeal the Court may, if it sees fit, allow further evidence to be adduced. 6. The costs of the proceedings shall be in the discretion of the Judge.

Where married woman is bankrupt. 77. The provisions of the two last preceding sections shall, *mutatis mutandis*, apply to a wife who is adjudicated a bankrupt, and in any such case the word "husband" shall be read as "wife", and the word "wife" shall be read as "husband".

Covenants in consideration of marriage, when void. 78. Any covenant or contract made by a debtor in consideration of marriage for the future payment to, or for the settlement upon or for his wife or children, of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, upon his being adjudicated a bankrupt before or within three months after such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against the Assignee. — E. 46 & 47 Vic. c. 52, § 47 (2).

Fraudulent preference. Securities on chattels void if executed within four months of bankruptcy so far as regards past advances. Saving of bona fide purchaser, etc. 79. 1. Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money, in favour of any creditor, or any person in trust for any creditor, with a view to giving that creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the Official Assignee. 2. Every instrument by way of security under *The Chattels Transfer Act, 1908*, over any property of a bankrupt shall be null and void as against the Assignee of the bank-

rupt's estate if executed within four months prior to the adjudication, except as to money actually advanced or paid, or the actual price or value of goods sold or supplied by the grantee of the security to the grantor at the time of or at any time after the execution thereof. Any unpaid purchase-money for any property shall be deemed to be money actually advanced at the time of execution: Provided that the instrument for securing the same is executed within twenty-one days after the sale of the property. 3. This section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration. — E. 46 & 47 Vic. c. 52, § 48. — If the motive of the debtor in making a preference was not to prefer a particular creditor or class of creditors, but to protect himself, the conveyance is valid, although one of its incidents is to prefer a certain creditor or class of creditors. — *In re Langstone's Sheep Medicine Co.*, Ex parte Official Liquidator, 16 L. R. (N. Z.) 206. The desire to prefer the particular creditor must be the dominant motive (per Edwards, J.), or at least an operative and effective motive (per Denniston, J.) of the debtor. — *In re Reimer*, Ex parte Official Assignee, 15 L. R. (N. Z.) 198 (approved in *In re Langstone's Sheep Medicine Co.*, Ex parte Official Liquidator, 16 L. R. (N. Z.) 206). *Contra*, *Official Assignee v. Moa Dairy Factory Co.*, 6 L. R. (N. Z.) 177 (decided under the Bankruptcy Acts, 1883—1885). Under subsection 2 an agreement to pay moneys which have never been received, as well as an agreement in reference to past advances, is void. But an agreement to pay interest on a present advance is valid. — *In re Gore*, 13 L. R. (N. Z.) 710. But a payment made by the debtor shortly before his bankruptcy in discharge of a security which would have been void under subsection 2 as being executed within four months antecedent to the bankruptcy, is nevertheless valid. — *In re McCandlish*, Ex parte Official Assignee, 15 L. R. (N. Z.) 407 (distinguishing *In re Bloomfield*, 5 L. R. [N. Z.] 51). Subsection 3 does not affect subsection 2. Its provisions are merely a limitation on the provisions of subsection 1. — *In re Marsh*, 12 L. R. (N. Z.) 456. The words "good faith" mean good faith in relation to the general body of creditors, and the absence of any intention to contravene the policy of the bankruptcy law. Good faith will be presumed to exist. — *Official Assignee v. Moorhouse*, L. R. 4 S. C. (N. Z.) 420. The absence of proof of an intention to prefer a creditor is *prima facie* evidence of good faith. — *In re Turnbull*, Ex parte Neill Bros., L. R. 3 S. C. (N. Z.) 344. For a case where the circumstances showed absence of good faith, see *Pilmer v. Official Assignee*, 14 L. R. (N. Z.) 441. See also *In re Marsh*, 12 L. R. (N. Z.) 456; *Official Assignee v. Chick*, 9 L. R. (N. Z.) 622; *Lee v. Official Assignee*, 22 L. R. (N. Z.) 747. For cases where it was held that there was no fraudulent preference, the transaction not having been entered into in contemplation of bankruptcy, see *In re Harper*, Black & Co., Mac (N. Z.) 944; *In re Fairbrother*, *Official Assignee v. Baddeley*, 25 L. R. (N. Z.) 546. A payment made not voluntarily but under pressure from the creditor is not a fraudulent preference. — *In re Marsh*, 12 L. R. (N. Z.) 456. Cp. *In re Morgan*, L. R. 4 S. C. (N. Z.) 1. Under the Bankruptcy, 1883, Amendment Act, 1885, § 13, such a transaction was a fraudulent preference. — *Castendyck and Focke v. Official Assignee*, 6 L. R. (N. Z.) 67. The suit by the official assignee to recover property disposed of by way of fraudulent preference should be against the creditor who received the property. — *Official Assignee v. Hunter*, 16 L. R. (N. Z.) 608. Where an assignment is made to secure an antecedent debt, although the pressure of the creditor may present it from being a fraudulent preference, no amount of pressure can prevent it from being an act of bankruptcy, and if the creditor knows that there are numerous other creditors, and that the assets are insufficient for all he is not protected. — *Commercial Union Assurance Co. v. Macgibbon & Co.*, 25 L. R. (N. Z.) 43.

Creditor not entitled to benefit of execution, etc., unless execution completed before notice of act of bankruptcy. When execution deemed completed. 80. 1. Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment as against the Assignee on the debtor becoming a bankrupt unless he has completed the execution or attachment before the date of the adjudication and before notice of the filing of any bankruptcy petition against the debtor, or of the commission of any available act of bankruptcy by the debtor. 2. For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by sale, or, in the case of an equitable interest by the appointment of a receiver. — E. 46 & 47 Vic. c. 52, § 45. — For cases decided under the Bankruptcy Act of 1883, see *Pharazyn v. Maunsell*, L. R. 2 S. C. (N. Z.) 401; *Guy & Kinross v. Bullock's Trustee*, L. R. 2 C. A. (N. Z.) 15.

Where adjudication made before sale by Sheriff. Where goods of debtor above value of £20 taken in execution and sold, proceeds of sale to be held in trust for ten days. Execution not invalid because act of bankruptcy. 81. 1. Where the goods of a debtor are taken in execution, and, before the sale thereof, notice is served on the Sheriff that the debtor has been adjudicated a bankrupt, the Sheriff shall, on request, deliver the goods to the Official Assignee; but the costs of the execution

shall be a charge on the goods so delivered, and the Assignee may sell the goods or an adequate part thereof for the purpose of satisfying the charge. 2. Where the goods of a debtor are sold under an execution in respect of a judgment for a sum exceeding twenty pounds, the Sheriff shall deduct the costs of the execution from the proceeds of the sale, and retain the balance for ten days; and if within that time notice is served on him of a bankruptcy petition being presented against or by the debtor, and the debtor is adjudged a bankrupt thereon or on any other petition of which the Sheriff has notice, the Sheriff shall pay the balance to the Assignee, who shall be entitled to retain the same as against the execution creditor, but otherwise he shall deal with it as if no notice of the presentation of a bankruptcy petition had been served on him. 3. An execution levied on the goods of a debtor shall not be invalid by reason merely of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the Sheriff shall in all cases, if the sale be otherwise regular, acquire a good title to them against the Assignee. — E. 46 & 47 Vic. c. 52, § 46; 53 & 54 Vic. c. 71, § 11. — See § 55, *supra*. The goods become the property of the Official Assignee for the benefit of all the creditors. — *In re Jackson*, Ex parte Official Assignee, 6 L. R. (N. Z.) 392.

Certain payments, etc., not invalidated. 82. Subject to the provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, conveyances, dispositions, and other transactions, nothing in this Act shall invalidate, in the case of a bankruptcy: a) Any payment by the bankrupt to any of his creditors; b) Any payment or delivery to the bankrupt; c) Any conveyance or assignment by the bankrupt for valuable consideration; d) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration; provided that the following conditions are complied with, namely, that: e) The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the adjudication; and f) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction notice of any available act of bankruptcy committed by the bankrupt before that time. — E. 46 & 47 Vic. c. 52, § 49.

Apprentices and artied clerks.

Bankruptcy discharges liability of bankrupt and apprentice. Court may order portion of apprentice fee to be paid to apprentice. Bankrupt to assign apprentice if required. After discharge Court may order apprenticeship to be completed. 83. 1. Where at the time of the bankruptcy any person is apprenticed or is an artied clerk to the bankrupt pursuant to written contract in that behalf, the bankruptcy shall, as between the bankrupt and the apprentice or artied clerk, be a complete discharge of the liability of the bankrupt and apprentice or artied clerk respectively under the contract. 2. If any money has been paid by or on behalf of such apprentice or artied clerk to the bankrupt as an apprentice fee or premium, the Court, on proof thereof, may order such reasonable sum as it thinks fit to be paid out of the bankrupt's estate to or for the use of the apprentice or artied clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he resided or served with the bankrupt under the contract before the bankruptcy. 3. It shall be the duty of the bankrupt, at the request and cost of the apprentice or artied clerk, to assign the apprentice or artied clerk to any person to be named by him in that behalf, and the service of the apprentice or artied clerk with such person shall, to the extent of the time of such service, be deemed to have been good service under the contract between him and the bankrupt. 4. If, after the bankrupt has obtained his discharge, the Court is of opinion that the bankrupt is in a position to accept the services of the apprentice or artied clerk for the remainder of the term of the contract, the Court may, on the application of the apprentice or artied clerk, order the term of the apprenticeship to be completed, the residue of the term to date from the time mentioned in such order, and the apprenticeship or artied clerkship to be on the same terms as originally provided; and all moneys paid to or for the apprentice or artied clerk under subsection two hereof to be refunded to the Assignee. — E. 46 & 47 Vic. c. 52, § 41. See § 120, *infra*.

Powers of Assignee in regard to particular property.

Onerous property may be disclaimed. Effect of bankruptcy in regard to onerous property. Operation of disclaimer. Person interested may give Assignee one month's notice to disclaim. Court may, on application of person who has contracted with bankrupt, make order rescinding contract. Court may make vesting order in respect of disclaimed property. Terms upon which vesting order in respect of leasehold property may be made. Rights of lessor saved. If no person willing to accept vesting order, Court may vest property in reversioner. Person injured by disclaimer may prove. 84. 1. Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, or of shares or stock in companies, or of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the Assignee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him and filed in the Court at any time within three months after the date of adjudication, disclaim the property: Provided that where any such property has not come to the knowledge of the Assignee within three months after adjudication he may disclaim such property at any time within two months after he first becomes aware thereof. 2. The personal liability of the bankrupt in respect of such property shall absolutely cease from the date of adjudication, and in the case of shares in companies he shall from the date of adjudication cease to be a member of such company. 3. The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt's estate in or in respect of the property disclaimed, and shall also discharge the Assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his estate and the Assignee from liability, affect the rights or liabilities of any other person. 4. The Assignee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the Assignee by any person interested in the property, requiring him to decide whether he will disclaim or not, and the Assignee has, for a period of one month after the receipt of the application, failed to give notice whether he disclaims the property or not; and, in the case of a contract, if the Assignee after such application as aforesaid does not within the said period disclaim the contract, he shall be deemed to have adopted it. 5. The Court may, on the application of any person who is, as against the Assignee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract or otherwise as the Court deems equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy. 6. The Court, on the application of any person who claims any interest in any disclaimed property, or who is under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, may make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it seems just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just, but no costs shall be payable by the Assignee in respect of such order. 7. On any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance, transfer, or assignment for the purpose, subject, however, and without prejudice, to any under-lease, sub-tenancy, or mortgage by demise thereof, unless the under-lessee, sub-tenant, or mortgagee consents to such vesting order. 8. The Court may, on such application as aforesaid, make such orders with respect to fixtures, tenants' improvements, and other matters arising out of the tenancy of any property disclaimed as the Court thinks just. 9. Where the property disclaimed is of a leasehold nature the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the

bankrupt was subject to under the lease in respect of the property at the date of adjudication. 10. The rights and powers of the lessor of any disclaimed land shall not be prejudiced or affected by the disclaimer or by any vesting order, or by anything herein contained, except as herein expressly provided. 11. If there is no person claiming under the bankrupt who is willing to accept an order upon the terms specified in subsection nine hereof, the Court shall have power to vest the bankrupt's estate and interest in the property in any lessor-reversioner or other person with whom the bankrupt originally contracted, or any person claiming under him, or in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt, to perform the lessee's covenants in such lease, subject, however, and without prejudice, to any under-lease, sub-tenancy, or mortgage by demise thereof, unless the under-lessee, sub-tenant, or mortgagee consents to such vesting order. 12. Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy. — E. 46 & 47 Vic. c. 52, § 55; 53 & 54 Vic. c. 71, § 13. — The Official Assignee can not disclaim an equity of redemption in freehold land. — *In re Rickman*, Ex parte Bank of New Zealand, 8 L. R. (N. Z.) 381. When the assignee disclaims a lease, and the lessor takes back the land, the lessor can not sue for rent. — *Fisher v. Travers*, 4 J. R. (N. S.) C. A. (N. Z.) 40; *Hunter v. Gould*, L. R. 3 S. C. (N. Z.) 181. If land is leased to two co-tenants, and one tenant becomes bankrupt, and obtains his discharge, if his trustee has disclaimed the lease the interest of the bankrupt tenant reverts to the lessor. — *Gardner v. Sidey*, Mac. (N. Z.) 1051; *Miller v. Young*, L. R. 2 C. A. (N. Z.) 1. But the disclaimer can not operate to determine derivative estates held under the bankrupt's lease. — *Grattan v. Giles*, 2 J. R. (N. S.) S. C. (N. Z.) 213 (but subject now to the provisions of subsection 11). In the case of a disclaimer the lessor may prove against the estate for the difference between the letting value of the premises and the rent payable under the lease. — Ex parte Inglis, *In re Paulin*, L. R. 4 S. C. (N. Z.) 338. But not for the costs of an order revesting the property in him, unless he has sustained actual damage by such revesting. — Ex parte Commercial Property, etc., Co., *In re Roughton*, 8 L. R. (N. Z.) 510 (overruling on this point Ex parte Inglis, *In re Paulin*, L. R. 4 S. C. [N. Z.] 338).

Assignee may exercise bankrupt's right to transfer stock, shares, etc. 85. When any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, standing in his name in his own right, the Assignee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt; and all persons whose acts or consents are necessary in this behalf shall, at the request of the Assignee, do all acts, deeds, matters, and things necessary to enable such transfer to be completed. — E. 46 & 47 Vic. c. 52, § 50 (3).

Bankrupt upon request to execute assurances of property outside of New Zealand. 86. Where the bankrupt has any property of any kind, or any right, title, or interest in any property, elsewhere than in New Zealand, of which he may dispose by law, he shall forthwith, upon the request of the Assignee, execute all necessary assurances for granting and assigning the same to the Assignee for the benefit of the creditors of the bankrupt. — As to recognition of foreign bankruptcies in New Zealand, see note to § 163, *infra*.

Treasurer, etc., having property of bankrupt to deliver to Assignee. 87. Any treasurer or other officer, or any banker, solicitor, or agent of a bankrupt, having any money or securities belonging to the bankrupt in his custody, possession, and power as such officer or agent which he is not entitled by law to retain as against the bankrupt or the Assignee, shall on demand pay and deliver the same to the Assignee. — E. 46 & 47 Vic. c. 52, § 50 (6).

Enforcing surrender of property.

Conditions on which Court may order debtor to be arrested. Person arrested may apply for discharge from custody. Warrants may be transmitted by telegraph.

88. 1. The Court, at the instance of the Assignee or any creditor, at any time after the filing of a petition in bankruptcy by or against a debtor, and if it appears: a) That there is probable reason for believing that the debtor is about to go abroad or quit his place of residence, with a view of defeating, delaying, or embarrassing proceedings under this Act; or b) That there is probable cause for believing that the debtor is about to remove any of his property with a view of preventing or delaying such property being taken possession of for the purposes of this Act, or that there is probable ground for believing that he has concealed or is about

to conceal or destroy any of his property, or any of his books, documents, or writings, may by warrant cause such debtor to be arrested and kept in custody until he finds sureties to the satisfaction of the Court that he will appear and attend from time to time as the Court orders until he is discharged by the Court, and may cause any books, papers, moneys, or property belonging to such debtor, where-soever they may be found, to be seized and kept until such time as the Court directs. 2. Any person arrested upon any such warrant, or whose books, papers, moneys, or property are seized under such warrant, may apply at any time after such arrest or seizure to the Court for a summons against the Assignee or creditor aforesaid to show cause why the person arrested should not be discharged out of custody, or why his books, papers, moneys, or property should not be delivered up to him; and the Court may make such order therein as it thinks fit. 3. Any such warrant may, if the Court so orders, be transmitted by telegraph (the tele-graphic charges being first duly paid) and executed on the telegraphic copy there-of, accompanied by a telegraphic copy of the order of the Court. — E. 46 & 47 Vic. c. 52, § 25; 53 & 54 Vic. c. 71, § 7.

Assignee authorised by warrant may seize bankrupt's property. Court may grant search-warrant. 89. 1. The Assignee or any other person may, if thereunto authorised by a warrant issued by the Court, seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and with a view to such seizure, may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be, and seize and take possession of his property there. 2. Where there is reason to believe that property, or any book, paper, or document relating to the affairs or property of the bankrupt, is concealed in any house or place, the Court may, if it thinks fit, grant a search-warrant to the Assignee and his assistants, or other persons appointed by the Court, who may execute the same according to the tenor thereof, and shall in respect to the execution thereof have the like protection as is allowed by law in respect of the execution of a search-warrant for property supposed to be stolen. — E. 46 & 47 Vic. c. 52, § 51.

If bankrupt or member of his family refuses to quit tenement, Court may make order. 90. If the bankrupt or any member of his family refuses, when required by the Assignee, to quit and deliver up possession of any tenement forming part of the property vested in the Assignee under the bankruptcy, the Assignee may apply to the Court for a summons calling upon such person to show cause why he should not forthwith quit and deliver up possession of the premises, and on the hearing of the said summons the Court may make such order as the case may require, and such order shall be enforceable as any other order of the Court.

Court may order post letters of bankrupt to be redirected to Assignee, and same may be opened by him. 91. The Court, upon the application of the Assignee, may from time to time order that, for such time as it thinks fit, not exceeding three months from the date of such order, post letters addressed to the bankrupt shall be redirected, sent, or delivered by the Postmaster-General or the officers acting under him to such Assignee, or otherwise as the Court directs, and the same shall be done accordingly; and any such letters may be opened by the Assignee and any property therein belonging to the bankrupt may be retained by the Assignee, and shall form part of the bankrupt's estate. — E. 46 & 47 Vic. c. 52, § 26.

Examination before Assignee or Magistrate.

Assignee may examine person respecting bankrupt or his property. Examination may be before Magistrate. Examination to be committed to writing and signed. Court may order person to be arrested and brought up before Court. Expenses of apprehension and examination by Court. Any person attending on summons to have expenses allowed. 92. 1. The Assignee may, at any time before or after the date of the order of discharge, summon before him and examine on oath the bankrupt, or his wife, or any other person known or suspected to have in his possession any of the property, or any book, paper, or document relating to the affairs or property of the bankrupt, or supposed to be indebted to the bankrupt, or whom he deems capable of giving any information respecting the bankrupt, his trade, dealings, or property, or concerning his income from any source, or his expenditure, and may require such person to produce and surrender to the Assignee any book, paper, or docu-

ments in his custody or power relating to the dealings or property of the bankrupt. 2. The Assignee may, in lieu of summoning before himself and examining the bankrupt or such other person as aforesaid, summon him to appear before any specified Magistrate at an appointed time and place, and such Magistrate is hereby empowered to administer the oath and conduct such examination. 3. The examination of the bankrupt and every such person shall be committed to writing, and the bankrupt and such person, on being required to do so, shall sign the same. 4. If the bankrupt or any other person so summoned fails without reasonable excuse to come before such Assignee or Magistrate at the time appointed, then the Court may, on the application of the Assignee, by warrant, cause the bankrupt or any such person to be apprehended and brought up for examination before the Court. 5. All expenses occasioned by such apprehension and examination before the Court shall be paid by the person apprehended and examined, if it appears to the Court that the evidence given by him was necessary for the purposes of the estate. 6. The bankrupt, and every other person attending on any such summons may have such expenses allowed to him or them as the rules direct, and no person so summoned to attend shall be liable to any penalty or punishment for failing to obey the summons unless the reasonable expenses of his attendance are first paid or tendered to him.

No person excused from answering questions tending to criminate. Statements made on examination not admissible in evidence in criminal proceedings. Person examined may be represented by solicitor. 93. 1. The bankrupt or other person who is summoned or examined by the Court, or by the Assignee or Magistrate, under any of the powers given by this Act, shall not be excused from answering any question on the ground that the answer may criminate or tend to criminate such bankrupt or person. 2. A statement made by any bankrupt or person in answer to any question put by or before such Court, or Assignee or Magistrate, shall not, in criminal proceedings, be admissible in evidence against such bankrupt or any person, except upon a charge of perjury against such bankrupt or person in respect of his sworn testimony upon such examination; but this provision is subject, and without prejudice, to subsection six of section one hundred and twenty-four hereof. 3. Whenever a bankrupt or other person is examined by the Court, or by the Assignee or Magistrate, under any of the powers given by this Act, he may be represented by a barrister or solicitor, who may also examine him; and his answers to such barrister or solicitor shall form part of his examination.

Part VII. Meetings of Creditors. Summoning of meetings.

Assignee to summon first meeting. Notice of meeting. When general meetings to be summoned. How general meetings to be summoned. 94. 1. The Assignee shall summon the first meeting of creditors at his own office, or at some convenient place, for a day not later than fourteen days after the adjudication, unless the Court for any special reason deems it expedient that the meeting be summoned for a later day. 2. He shall forthwith advertise a notice of the time and place appointed for such meeting, and a copy of such notice shall be served upon the bankrupt, and shall be sent by post-letter or post-card to each creditor mentioned in the bankrupt's statement of affairs at the address given therein, or such other address as may be known to the Assignee. 3. The Assignee may at any time call a meeting of the creditors at his own office, or at such place as in his opinion is most convenient for the majority of the creditors, and shall call such meeting when required by one-fourth in value of the creditors who have proved their debts. 4. Meetings subsequent to the first meeting shall be summoned by sending notice by post-letter or post-card of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the bankrupt's statement of affairs, or at such other address as may be known to the Assignee. — E. 46 & 47 Vic. c. 52, Sched. II., §§ 1—6; 53 & 54 Vic. c. 71, § 18. — The Court can not by rule impose additional qualifications on creditors to entitle them to vote. — *Worgan v. Curl*, 2 J. R. (N. S.) S. C. (N. Z.) 200.

Procedure.

Chairman. Adjournment. Books, etc., to be produced. Minutes to be kept. Minutes to be prima facie evidence. Quorum. Lapse of meeting. 95. 1. The Assignee shall be the chairman of all meetings; but, if the Assignee is not present

at the meeting, the meeting may elect one of their number qualified to vote at such meeting to act as chairman during his absence, and any creditor while acting as chairman in the absence of the Assignee is hereby empowered to administer any oaths which the Assignee could have administered if present. 2. The Assignee or chairman, with the consent of the meeting, may adjourn any meeting from time to time and place to place. 3. The Assignee shall, if required, produce to every meeting and to any adjournment thereof all books of account, deeds, and papers then in his possession relating to the property of the bankrupt. 4. The Assignee shall cause minutes of the proceedings at every meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or the chairman. 5. The minutes of any general meeting of creditors, upon proof of signature of the Assignee or chairman presiding at such meeting, shall be *prima facie* evidence in all Courts of justice of what passed at such meeting. 6. A meeting shall not be competent to act for any purpose except the election of a chairman in the absence of the Assignee, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat at least three creditors, or all the creditors if their number does not exceed three. 7. If within a quarter of an hour from the time appointed for any meeting a quorum of creditors is not present or represented, the meeting shall be adjourned either *sine die* or to such time and place as the Assignee or chairman appoints. — E. 46 & 47 Vic. c. 52, Sched. I, §§ 7, 22—26. — *Semble*, there must be actually present at the meeting more than one person, even though the person present holds proxies from a sufficient number of creditors to constitute a quorum. — *In re Andrew*, 2 J. R. (N. S.) S. C. (N. Z.) 257.

Proxies.

Creditor may vote by proxy. Form of proxy. General proxy. Power of attorney. Special proxy. No proxy may vote in favour of resolution benefiting himself, partner, or employer. For purpose of first meeting, proxies may be sent by telegraph. 96. 1. A creditor may vote either in person or by proxy. 2. Every instrument of proxy shall be in the prescribed form, or to the effect thereof, and shall be signed by the creditor before a Justice, solicitor, or Postmaster, and must be produced to the Assignee before or at the meeting to entitle the holder thereof to vote, and may be revoked at any time by notice to the Assignee. 3. A creditor residing or being absent more than ten miles from the place of meeting may give a general proxy to any person, and any creditor may give a general proxy to his manager or clerk, or any other person in his regular employment; and in such latter case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor. 4. Any person holding a power of attorney from a creditor empowering him to recover debts due to such creditor shall, on producing such power of attorney or a copy thereof authenticated to the satisfaction of the Assignee before or at the meeting, be deemed to be the holder of a general proxy from such creditor, and may vote on his behalf. 5. A creditor may give a special proxy to any person to vote at any special meeting or adjournment thereof for or against any specific resolution, or for or against any specific person as supervisor. 6. No person acting under either a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor, or as a supervisor. 7. For the purpose of the first meeting, any creditor who resides more than fifty miles from the place may lodge his proof and proxy with the Assignee in the district in which he lives, and such Assignee, if satisfied that such proof and proxy are in due form, may at the expense of such creditor, transmit such proof and proxy to the Assignee having charge of the estate, and may at the like expense telegraph the amount of the debt on which the creditor claims to vote, and the name of the person appointed proxy, and any other particulars; and thereupon such person so appointed as proxy may attend the meeting and vote thereat. — E. 46 & 47 Vic. c. 52, Sched. I, §§ 15—21; 53 & 54 Vic. c. 71, § 22.

Voting.

No vote until proof. No vote in respect of unascertained debt. Secured creditor only to vote in respect of debt after valuing, etc., security. Creditor secured by bill to produce same, and value security for purposes of voting. Creditor of partnership may prove for purposes of voting against one bankrupt partner. 97. 1. At any meet-

ing of creditors a person shall not be entitled to vote as a creditor unless at or previously to the meeting he has duly proved a debt provable under the bankruptcy to be due or owing to him. 2. A creditor shall not vote at the said meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained. 3. A secured creditor may vote in respect of the debt due to him only after valuing, surrendering, or realising his security in accordance with the provisions hereinafter contained in respect of secured creditors. 4. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and who is not a bankrupt, as a security in his hands, and to estimate the value thereof, and, for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof; provided that the Assignee may at any time require the production of such bill or note. 5. If an order of adjudication is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat. 6. The Assignee shall have power to admit or reject a proof for the purpose of voting. — E. 46 & 47 Vic. c. 52, Sched. I., §§ 8—14.

Part VIII. Proofs of Debt. What debts are provable.

Demands not provable. Debts contracted after notice of act of bankruptcy not provable. Debts provable. 98. 1. Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bankruptcy. 2. A person having notice of any act of bankruptcy available against the bankrupt shall not prove under the bankruptcy for any debt or liability contracted by the bankrupt subsequent to the date of his so having notice except in respect of a debt or liability contracted for the supply of the necessities of life for the use of the bankrupt and his family. 3. Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of adjudication, or to which he becomes subject before his discharge by reason of any obligation incurred before the date of adjudication, shall be deemed to be debts provable in bankruptcy. — E. 46 & 47 Vic. c. 52, § 37 (1—3). — Future instalments of alimony payable to the wife under a decree of judicial separation, are not provable in bankruptcy. — *In re Davidson*, Ex parte Davidson, L. R. 2 S. C. (N. Z.) 55. Claims arising out of the commission of a felony may be proved. — *In re Pemberton*, L. R. 1 S. C. (N. Z.) 61; *In re Waters*, Ex parte City Advance Co., L. R. 5 S. C. (N. Z.) 449. And loans made by a wife to her husband out of her separate estate. — *In re McGregor*, Ex parte McGregor, 6 L. R. (N. Z.) 672. But not a claim based upon a verdict for damages, not followed by judgment. — Ex parte Polls, *In re Tonks*, 3 J. R. (N. S.) S. C. (N. Z.) 1.

Effect of proof.

Proof of debt an election to take benefit of bankruptcy. 99. The proving or claiming of a debt or demand under this Act shall be deemed an election by the creditor to take the benefit of the bankruptcy with respect to that debt or demand, and any action, suit, or proceeding by the creditor to recover such debt or enforce such demand shall be *ipso facto* restrained.

Debts, how and when proved.

Creditors to prove upon adjudication. Debts, how proved. Affidavit of debt, by whom made. Contents of affidavit. Creditor to bear cost of proving debt. Creditor who has proved may examine proofs of other creditors. Proof may be amended. Formalities of amendment. Proofs to be lodged within two months from adjudication. Proof by companies. 100. 1. Every creditor shall prove his debt, whether a preferential claim or not, as soon as may be after the making of the order of adjudication. 2. A debt may be proved by delivering or sending through the post in a prepaid letter to the Official Assignee an affidavit verifying the debt. 3. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor; and if made by a person so authorised it shall state his authority and means of knowledge. 4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated; and the Official Assignee may at any time call for the production of the vouchers. 5. A creditor shall bear the cost of proving his debt, unless the Court specially orders otherwise. 6. Every

creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting and at all reasonable times. 7. A creditor may, with the leave of the Assignee, from time to time amend his proof. 8. Every amendment of a proof shall be made subject to the same formalities as an original proof, and shall be sworn or declared to in the same manner. 9. No proof shall be admitted or amended after the expiration of two months from the date of the adjudication, except under special circumstances approved by the Assignee or by the Court as sufficient to justify the delay. 10. Companies and other bodies incorporated or authorised to sue may prove by an agent, who shall be deemed the claimant, and who shall in his affidavit declare that he is such agent, and that he is authorised to make such proof, or to give a discharge for debts due to the company. — E. 46 & 47 Vic. c. 52, Sched. II., § 1 (7).

Admission or rejection of proofs.

Assignee to examine proofs and admit or reject. Where proof improperly admitted. Court may make order where Assignee fails to decide upon proof. Disallowance of proof, when final. Power of Assignee to examine persons respecting proofs. Costs of examination. 101. 1. The Assignee shall have power to accept or reject proofs either wholly or in part, and he shall examine every proof and the grounds of the debt, and, as soon as conveniently may be, admit or reject it, in whole or in part, or require further evidence in support of it. 2. If he rejects a proof, he shall give notice to the creditor of the grounds of the rejection. 3. If he thinks that a proof has been improperly admitted, the Court may, on the application of the Assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount. 4. If he fails to decide upon the admission or rejection of a proof for fourteen days after notice to decide upon it has been given to him by the bankrupt or any creditor, the Court may, upon the application of the bankrupt or such creditor, admit or reject such proof, or make such other order as it thinks fit. 5. If within thirty days after the Assignee has served notice on any creditor of the rejection of his proof such creditor does not apply to the Court to reverse such decision, and the Court, on the hearing of such application, does not reverse such decision, the same shall be final and conclusive as to the right of the creditor to prove for the debt or claim in respect of which the proof has been disallowed. 6. The Assignee shall have power to summon before him, and to examine on oath or otherwise, any person who has tendered or made a proof, whether preferential or otherwise, or who has made a declaration or statement, and may also summon before him any such person or any person capable of giving evidence concerning such proof, or the debt sought to be proved; and, in case any person so summoned fails to attend, or refuses to be sworn or to give evidence, the fourth and following subsections of section ninety-two hereof shall be read as applicable to any summons or examination under this section. 7. All costs incident to such order and examination shall be paid by the person so failing or refusing, unless the Court otherwise orders. — E. 46 & 47 Vic. c. 52, Sched. II., §§ 22—27. — For an application of subsection 4 see *In re Fairbrother, Ex parte Fairbrother*, 16 L. R. (N. Z.) 43.

Proofs by secured creditors.

Secured creditor to give particulars of security and value. Creditor surrendering security may prove for whole debt. When Assignee dissatisfied with value he may require property to be offered for sale. At auction Assignee may bid. Amendment of proof by secured creditor. On payment of estimated value security to be given up. If Assignee does not take over security at value, any creditor may take over same. When security realised. On non-compliance creditor excluded from dividend. No creditor to receive more than twenty shillings in the pound. Saving of rights of secured creditors. 102. 1. A secured creditor shall state in his proof the particulars of his security, the date when it was given, and the value at which he estimates it, and shall be deemed to be a creditor only in respect of the balance due to him after deducting the value so estimated. 2. If a secured creditor surrenders his security to the Assignee for the general benefit of the creditors he may prove for the whole debt. 3. If the Assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the Assignee, or, in default of such agree-

ment, as the Court may direct. 4. If the sale be by public auction, the creditor, or the Assignee on behalf of the estate, may bid or purchase. 5. Where a creditor has so valued his security he may at any time amend the valuation and proof on showing to the satisfaction of the Assignee or the Court that the valuation and proof were made *bona fide* on a mistaken estimate; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court orders, unless the Assignee allows the amendment without application to the Court; and from the date of such amendment the said amended proof shall be the proof of that creditor for all purposes under this Act. 6. A secured creditor shall, on application made by the Assignee at any time within six months from the date of the proof, but before the declaration of the final dividend, and before the secured creditor has realised his security, and on payment of the value of his security as estimated in his proof, in addition to the reasonable costs of any attempted sale under subsection three of this section, and in addition to such sum as he has expended since the date of the proof in the improvement of the property forming the security, give up his security to be dealt with as part of the property of the bankrupt for the benefit of the creditors. 7. If the Assignee does not wish to take over any security as in the last preceding subsection mentioned, any creditor may, with the consent of the Assignee, at any time within six months from the date of the proof, but before the declaration of the final dividend, and before the secured creditor has realised his security, and upon payment of the value of such security as estimated in the original or amended proof, in addition to the reasonable costs of any attempted sale under subsection three of this section, and in addition to such sum as the secured creditor may have expended since the date of the proof in the improvement of the property forming the security, require such secured creditor to transfer such security to him for his own benefit, and he shall thereupon transfer such security accordingly. 8. If a creditor after having valued his security subsequently realises it before the declaration of a final dividend, or if it is realised under the provisions of subsection three of this section, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor; but if the security is a mortgage over land, and the mortgagee becomes the purchaser thereof under the provisions of *The Property Law Act, 1908*, or *The Land Transfer Act, 1908*, the amount to be substituted shall be the value thereof as agreed upon between the Assignee and the secured creditor, or, in case they do not agree, as fixed by arbitration in accordance with the provisions of *The Arbitration Act, 1908*, the costs to be fixed as directed by the arbitrators or umpire. 9. If a secured creditor does not comply with this section he shall be excluded from all share in any dividend. 10. Subject to the provisions of this section a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Act. 11. Except as in this Act expressly provided, nothing in this Act shall affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise and deal with it if this Act had not been passed. — E. 46 & 47 Vic. c. 52, Sched. II., §§ 9—17. — See section 107, *infra*. Where a secured debt is inadvertently proved without giving or deducting the value of the security, the Court may permit an amendment of the proof. — In re Winefield, L. R. 3 S. C. (N. Z.) 394; In re Fairbrother, Official Assignee v. Baddeley, 25 L. R. (N. Z.) 546. So, too, where the security was valued at too low a sum. — In re Earp, Ex parte National Bank of New Zealand, 9 L. R. (N. Z.) 410. For procedure in cases where a mortgagee seeks to prove against the estate for the whole of the mortgage debt incurred by the bankrupt and the other mortgagors, and secured by a mortgage on lands held in common by the mortgagors, see In re Jacobs, 9 L. R. (N. Z.) 293. See also Phrazyn v. Maunsell, L. R. 2 S. C. 401; In re Cairns, Ex parte New Zealand Land Mortgage Co., 7 L. R. (N. Z.) 42.

Proofs in particular cases.

Trade discounts. 103. A creditor proving his debt shall deduct therefrom all trade discounts, and such portion of any discount he may have agreed to allow for payment in cash as exceeds five per centum on the net amount of his claim. — E. 46 & 47 Vic. c. 52, Sched. II., § 8.

Set-off. 104. Where mutual credit has been given by the bankrupt and any other person, or where there are mutual debts between the bankrupt and any other person, or where any person entitled to prove in respect of any debt or demand is indebted or liable to the bankrupt in respect of any debt or demand, the account

between the bankrupt and such person shall be stated, and one debt or demand may be set against another, and no more than appears due on either side on the balance of account shall be claimed or paid on either side: Provided that a person shall not be entitled under this section to claim the benefit of any set-off against the property of a bankrupt where he had, at the time of giving credit to the bankrupt, notice of an available act of bankruptcy committed by the bankrupt; and a creditor claiming the benefit of a set-off shall, in his proof, declare that he had at the time of giving credit no notice of such an act of bankruptcy. — E. 46 & 47 Vic. c. 52, § 38.

Interest. 105. When a debt or sum certain on which interest is not reserved or agreed for is due at the time of the adjudication, and is provable, the creditor may prove also for interest at the rate for the time being in force in the case of judgment debts in the Supreme Court for the period intervening between the time when the debt or sum was payable, if it was payable by virtue of a written instrument at a certain time, or, if not, then between the time when demand of payment was made in writing, with a notice in writing that interest would be claimed from that demand until payment, and the date of adjudication. — E. 46 & 47 Vic. c. 52, Sched. II., § 20.

Debt payable at future time. 106. Any creditor in respect of a debt not payable at the time of the adjudication, whether on a negotiable instrument or not, may prove the debt as if it was payable presently, allowing thereout discount at the rate aforesaid from the date of adjudication until the time when the debt is payable: Provided that no discount shall be made from a debt payable within three months of the adjudication. — E. 46 & 47 Vic. c. 52, Sched. II., § 21.

Debt owing on invalid security. 107. A creditor secured by a security which under the provisions of this or any other Act is declared wholly or in part void against the Assignee in the bankruptcy shall be entitled to prove for so much of the money which is justly owing to him and is not admitted to be secured under the said security.

Where bankrupt liable as member of several firms, proof may be made against the properties liable. Separate creditors may prove under joint adjudication. 108. 1. If a bankrupt was at the date of adjudication liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts against the properties respectively liable on the contracts. 2. Any separate creditor of a bankrupt shall be at liberty to prove his debt under any adjudication of bankruptcy made against such bankrupt jointly with any other person. — E. 46 & 47 Vic. c. 52, Sched. II., § 18.

Assignee to estimate value of contingent debt. Appeal from Assignee's estimate. Liability not capable of estimate not provable. Where capable of estimation Court may estimate. 109. 1. An estimate shall be made by the Assignee of the value of any debt or liability provable under the bankruptcy which, by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value. 2. Any person aggrieved by any estimate by the Assignee as aforesaid may appeal to the Court. 3. If, in the opinion of the Court, the value of the debt or liability can not be fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in the bankruptcy. 4. If, in the opinion of the Court, the value of the debt or liability can be fairly estimated, the Court may direct the value to be assessed before the Court itself, without the intervention of a jury, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in the bankruptcy. — E. 46 & 47 Vic. c. 52, § 37 (4—7).

How claim for unliquidated damages assessed. 110. Where the bankrupt is at the time of adjudication liable, under a contract or promise, to a demand in the nature of unliquidated damages, then, notwithstanding that such contract or promise has not been broken before the adjudication, the Assignee may agree with the person claiming as to the amount to be allowed as assessed damages; and if the Assignee and such person do not agree, the Court, may direct the damages to be assessed before the Court itself, without the intervention of a jury, and may give all necessary directions for that purpose, and the damages so agreed on or assessed may be proved under the bankruptcy.

When company may prove for unpaid calls. 111. Where the bankrupt is at the time of the adjudication a member of a company registered under any Act relating to the registration of companies, and not in the course of being wound up under that Act, the company, notwithstanding that the Assignee has disclaimed such shares, may prove for the amount of calls made before the adjudication in respect of the shares held by the bankrupt and not paid, and may claim for the value, estimated as the Court directs, of the liability to calls to be made in respect of such shares within one year after the adjudication: Provided that in estimating such liability in the case of mining companies the Court shall have due regard to the provisions of *The Companies Act, 1908*, relating to the forfeiture of shares in a mining company on which a call remains unpaid.

Clerks, etc., may prove for salary, etc., beyond preferential claim. 112. Any clerk, servant, artisan, labourer, or workman may, in addition to his preferential claim for salary or wages as hereinafter provided, prove and obtain a dividend on any claim he may have for salary and wages beyond that hereinafter made a preferential claim.

Where holder of marine policy, may prove though not beneficially interested. 113. Where a policy of insurance on a ship or on goods has been effected with the bankrupt as a subscriber or underwriter, the person effecting the policy may prove in respect thereof, although he was not beneficially interested in the ship or goods.

When a surety for bankrupt may prove. 114. Where any person is at the time of the adjudication surety or liable for any debt or liability of the bankrupt, and pays or satisfies the debt or liability, or any part of it in discharge of the whole, although he does so after the adjudication, the following provisions shall have effect: a) If the creditor has proved, the surety or person liable may stand in his place in respect of the proof; b) If the creditor has not proved, the surety or person liable may prove for the payment made by him as a debt, not disturbing former dividends, and may receive dividends.

Judgment creditor may prove for costs though not taxed before bankruptcy. 115. Every person who, under a verdict, judgment, decree, order, or rule in or of any Court obtained before the adjudication, would have been entitled to recover costs from the bankrupt if he had not become bankrupt may prove for the amount of such costs when taxed, although the taxation is not had before the adjudication.

Proof for costs, etc., payable by bankrupt under process of contempt. 116. A person entitled to enforce against the bankrupt payment of any money, costs, or expenses by process of contempt issuing out of any Court may prove for the amount payable under the process, subject to such ascertaining of the amount as may properly be had by taxation or otherwise.

Plaintiff must relinquish action, etc., before proving. 117. A creditor who has brought an action or instituted a suit against a bankrupt in respect of a debt or demand provable under this Act shall not prove a claim in respect of that debt or demand without first relinquishing the action or suit. Provided that: a) Such creditor shall not be liable by reason thereof to pay the costs of the action or suit; b) Where the action or suit is against the bankrupt jointly with any other person, the relinquishment thereof as against the bankrupt shall not affect the action or suit as against that other person; c) If the bankruptcy is annulled, the creditor may proceed in the action or suit as if he had not proved or claimed.

Part IX. Composition with Creditors.

Resolution to accept composition. Resolution confirming. Notice of meeting to pass confirming resolution. Majority of creditors, how computed. Application to Court to confirm resolution. Court to hear report, etc., before approving. Conditions on which Court may refuse to approve. Composition not to be approved unless priorities observed. How Court testifies approval. Composition approved binding on creditors. Court may rectify errors in composition. Approval conclusive as to validity. After approval, deed of composition to be executed. If Court satisfied with deed, same to be entered and bankruptcy annulled. Deed to be registered against lands. Registration to pass property in land. When deed entered bankrupt to be put in possession of property. Remedy in case of default in payment of composition. Provisions of composition, how enforced. Jurisdiction of Court. On appli-

cation Court to proceed as in bankruptcy. Question to be decided as in bankruptcy. Consequences of delay in passing resolutions, etc. Distinct compositions may be made in cases of partnership bankruptcies. Bankrupt liable for unpaid balances of debts incurred by fraud. Assignee's commission. 118. 1. The creditors may, by special resolution, accept a composition in satisfaction of the debts due to them from the bankrupt, embodying in such resolution the terms of the composition. 2. The confirming resolution may vary the preliminary resolution so that the terms of the composition assented to by such confirming resolution are not more unfavourable to the creditors than those specified in the preliminary resolution. 3. The notice of the meeting to pass the confirming resolution shall state generally the terms of the proposal for composition, and shall be accompanied by a report of the Assignee thereon. 4. For computing the requisite majority of creditors for the passing of such confirming resolution as aforesaid, if the proposal for composition provides for the payment in full of all creditors whose respective debts do not exceed a certain amount, that class of creditors shall not be reckoned either in number or value. 5. When the confirming resolution has been passed, either the bankrupt or the Assignee may apply to the Court to approve the composition, and notice of the application shall be given to each creditor. 6. The Court shall, before approving a composition, hear a report of the Assignee as to the terms of the composition and as to the conduct of the debtor, and any objection which may be made by or on behalf of any creditor. 7. The Court may refuse to approve the composition if it is of opinion: a) That the provisions of subsections one, two, three, and four hereof have not been complied with; or b) That the terms of the composition are not reasonable or not calculated to benefit the general body of creditors; or c) That the bankrupt has committed any such misconduct as would justify the Court in refusing, qualifying, or suspending his discharge; or d) That for any reason it is not expedient that the composition should be approved. 8. No composition shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt. 9. If the Court approves the composition, the approval may be testified by the seal of the Court being attached to the deed hereinafter mentioned containing the terms of the composition, or by the terms being embodied in an order of the Court. 10. A composition so approved by the Court shall be binding on all the creditors, so far as relates to any debts due to them and provable under the bankruptcy. 11. At the time a composition is approved the Court may correct or supply any accidental or formal error or omission therein, but no alteration in the substance of the composition shall be made. 12. The approval of the Court shall be conclusive as to the validity of the composition. 13. Forthwith after the Court has approved a composition the bankrupt and the Assignee shall execute a deed of composition for carrying the proposal into effect, and such deed shall be produced to the Court by the Assignee, who shall forthwith apply to the Court to confirm the said deed. 14. The Court, if satisfied that the deed is in conformity with the composition as approved, shall direct the deed to be entered and filed in the Court, and shall annul the adjudication of bankruptcy, and the deed shall thereupon be binding in all respects upon all the creditors as if they had severally executed the same; and the property of the bankrupt shall vest and be dealt with thereafter as provided in the deed. 15. When any such deed of composition has been entered by the Registrar he shall indorse thereon the fact of such entry and filing in the Court, and shall deliver the deed to the Assignee, who shall forthwith have the deed registered in the proper Deeds or Land Registry Office against any lands or interest therein referred to, and on such registration being effected shall return the deed to the file in the Court. 16. The registration of any such deed shall be sufficient to pass any land affected thereby, and to vest such land in accordance with the terms expressed in the deed. 17. When any such deed of composition is entered by the Registrar the Assignee shall forthwith, subject to the provisions of the said deed, put the bankrupt (or, as the case may be, the trustee under the composition) into possession of the bankrupt's property, or such of it as is in possession of the Assignee and as is intended by the composition to re-vest in the debtor or trustee. 18. When default is made in payment of any composition approved by the Court as aforesaid, either by the debtor or the trustee, if any, no action to enforce such payment shall lie; but the remedy of any person aggrieved shall be by application to the Court. 19. The provisions of any com-

position under this section may be enforced by the Court on a motion made in a summary manner by any person interested, and any disobedience of an order of the Court made on the motion shall be deemed a contempt of Court. 20. Notwithstanding the approval of a composition, and whether the adjudication of bankruptcy is annulled or not, the Court, from and after the passing of the preliminary resolution, shall continue to have exclusive jurisdiction in the following matters, namely: a) The enforcement in any respect of the execution of the trusts, powers, covenants, or other provisions of the deed of composition; b) The hearing of any application of the bankrupt, or of any trustee or inspector acting under the deed, or of any creditor or person claiming to be a creditor, respecting the custody, distribution, inspection, management, or winding-up of the bankrupt's property or affairs, or any act or thing relating thereto done or happening after the execution of the deed by the bankrupt; c) The claim of any person to be a creditor; d) The audit or examination of the accounts of a trustee or inspector; e) The taxation or examination of the costs or charges of a solicitor, accountant, auctioneer, broker, or other person acting or employed under the deed; f) Any matter for the submission whereof to the Court provision is made by the deed. 21. On any application under the preceding subsection the Court may proceed and direct and authorise proceedings with respect to the summoning and examination of the bankrupt and witnesses, and otherwise, as in bankruptcy, and may make such order concerning the subject of the application and the costs thereof as seems just, and such order shall be enforceable as an order in bankruptcy. 22. The Court shall determine all questions arising under the deed of composition according to the law and practice in bankruptcy, so far as the same are applicable. 23. If the confirming resolution is not passed within one month after the passing of the preliminary resolution, or if the composition is not approved by the Court within one month after the passing of the confirming resolution, or if the deed of composition is not executed by the bankrupt within seven days after the approval of the composition by the Court, the proceedings in bankruptcy shall, immediately on the expiration of any such period, go on as if there had been no resolution, and that period shall not be reckoned in the calculation of time for any of the purposes of this Act. 24. Where the adjudication is against members of a partnership, the joint creditors and each class of separate creditors may make distinct compositions, and, if so made, the majorities of creditors required for passing the confirming resolution aforesaid shall be distinct majorities of each such class, but otherwise the joint and separate creditors shall have votes as one body. 25. The delay of any one of such classes of creditors in accepting, or their failure to accept, a composition shall not prevent any other of such classes from accepting such composition. 26. Where a bankrupt makes any composition with his creditors he shall remain liable for the unpaid balances of any debt which he incurred or increased, or whereof, before the date of the composition, he obtained forbearance by any fraud: Provided that the defrauded creditor has not assented to the composition otherwise than by proving his debt and accepting dividends. 27. No deed shall be entered and filed in the Court unless the commission, as specified in Part II. of the third Schedule hereto, is paid to the Assignee, which commission shall be paid into the Public Account and form part of the Consolidated Fund. — E. 46 & 47 Vic. c. 52, §§ 18, 19; 53 & 54 Vic. c. 71, § 3. — See *Levin v. Death*, 8 L. R. (N. Z.) 150. As to payment of commission to official assignee, see *In re Johnson*, Ex parte Official Assignee, 9 L. R. (N. Z.) 286.

Part X. Distribution of Assets. Assignee's bank account.

Assignee to pay money into bank. Separate account to be kept for each estate. Penalty for not paying moneys into bank. 119. 1. The Assignee shall day by day, except on public or bank holidays, pay all money received by him during the day into such bank as the Governor directs, to his own credit as "Official Assignee for the bankrupt estate of". 2. A separate account for each estate shall be kept by the Assignee of all money paid into or withdrawn from the bank in respect thereof; and all money required for the purposes of any estate shall be withdrawn from the sum to the credit of estate at the bank aforesaid by cheques signed by the Assignee, which must either be crossed or made payable to the order of the recipient. 3. If an Assignee at any time retains in his hands any moneys contrary to the provisions of this section, he shall, unless he explains the retention to the satisfaction of the Justices hearing the information, be liable to a fine not

exceeding twenty pounds per centum upon the amount so retained, and shall also be liable to be dismissed from his office and to pay any expenses occasioned by reason of his default. — E. 46 & 47 Vic. c. 52, §§ 74, 75.

Application of assets when realised.

Moneys to be applied by Assignee in payment of costs and expenses of Assignee. Costs of petitioning creditor. Costs of petitioning debtor. Supervisor's and Assignee's commission. Rent due, on certain conditions. Wages of clerk or servant. Wages of artisan. Fee payable to apprentice. Provable debts. Interest on proved debts. Surplus to bankrupt. 120. The moneys received by the Assignee by the realisation of the property of a bankrupt shall be applied by him as follows: a) First, in payment of: i) All costs, charges, allowances, and expenses properly incurred by or payable by the Assignee in the execution of his office; ii) The costs and expenses incurred by a creditor in procuring the order of adjudication, inclusive of and subsequent to the preparation and filing of the petition; iii) The costs and expenses incurred by a debtor in filing his petition, and other matters consequent thereon; b) Secondly, in payment of all commission payable to the supervisor and Assignee respectively, as specified in the third Schedule hereto; c) Thirdly, in payment of any rent for any period not exceeding six months actually due and payable by the bankrupt at the date of adjudication, if there were at that date goods on the premises in respect of which the rent was payable liable, but for the bankruptcy, to distress for rent: Provided that no person entitled to a preference claim for rent hereunder shall be entitled to more than the value of such goods so distrainable, such value to be fixed by the Court in a summary way in the event of the Assignee and landlord not agreeing as to the amount; Provided also that goods subject to a valid and duly registered security under *The Chattels Transfer Act, 1908*, shall not be deemed to be liable to distress for the purposes of this section unless they realise upon sale by the secured creditor more than the amount secured by such security, in which case the right of priority shall attach to the amount paid to the Assignee of the estate: Provided further that goods which the bankrupt is entitled to select under the next succeeding section shall not be deemed to be liable to distress for the purposes of this section; d) Fourthly, in payment of: i) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt during the whole or any part of the four months immediately preceding the date of the filing of a debtor's petition, or the filing of a creditor's petition on which an order of adjudication is made, not exceeding one hundred pounds; ii) All wages of any artisan, labourer, or workman, whether skilled or unskilled, whether payable for time or piecework, in respect of services rendered to the bankrupt during the whole or any part of the four months immediately preceding the filing of a debtor's petition, or the filing of a creditor's petition on which an order of adjudication is made, not exceeding fifty pounds; iii) Any sum ordered by the Court to be paid out of the bankrupt's estate to or for the use of an apprentice or an articulated clerk under section eighty-three hereof: Between themselves the debts mentioned in this subsection shall rank equally, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves: e) Fifthly, in payment, *pari passu*, of all debts provable and proved in the bankruptcy; f) Sixthly, in payment of interest from the date of adjudication on all debts proved in the bankruptcy at the rate for the time being in force in the case of judgment debts in the Supreme Court; g) Seventhly, in payment to the bankrupt of any surplus. — E. 51 & 52 Vic. c. 62, § 1; 46 & 47 Vic. c. 52, § 65. — See § 53, *supra*, § 128, *infra*. The second proviso in subsection c adopts the view of Denniston, J., in *Ward & Co. v. Fletcher, Humphreys & Co.*, 11 L. R. (N. Z.) 610, and renders obsolete the view of Richmond, J., in *Bryson v. Bank of New South Wales*, 12 L. R. (N. Z.) 712. A debtor adjudged bankrupt on his own petition is entitled to a refund of the cost of filing his petition and the costs of his solicitor. And a person who has lent money to the bankrupt to enable him to file his petition is likewise entitled to preference. — *In re Bennett*, 12 L. R. (N. Z.) 332.

Bankrupt to select furniture, etc., to value of £25. 121. The bankrupt shall be entitled immediately upon adjudication to select and retain as his own property his tools of trade and furniture and household effects, including the wearing-apparel of himself and family, to the value in the opinion of the Assignee of twenty-five pounds: Provided that this provision is without prejudice to any valid security there may be over the same, and shall not confer any rights upon the bank-

rupt to any other portion of his property if his tools of trade, household furniture, and effects do not in the opinion of the Assignee amount in value to twenty-five pounds, or are subject to any such security. — E. 46 & 47 Vic. c. 52, § 44. — This property is not subject to distress for rent. — § 120, *supra*, rendering obsolete *Official Assignee v. Brown*, L. R. 3 S. C. (N. Z.) 152; *Official Assignee v. Jackson*, 6 L. R. (N. Z.) 75.

Creditors may give back portion of estate. 122. The creditors may by resolution give back to the bankrupt any portion of his estate, but shall not give back any portion of his estate exceeding in the opinion of the Assignee fifty pounds in value, except by a special resolution.

Dividends.

Assignee to declare dividends as soon as possible. Notice of dividends to be advertised, etc., **Creditor may apply for order requiring Assignee to declare dividend.** Court may make or refuse order. In declaring dividends, Assignee to provide for debts due to distant creditors. After six months, not obligatory to provide for distant creditors. Dividends of creditor who is late in proving. Dividend to creditor who has amended proof. Dividend to creditor who has reduced proof. Dividends in case of joint bankruptcies. Final dividend. Production of bills on paying dividend. 123. 1. Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the Assignee shall, with all convenient speed, declare and distribute dividends among the creditors who have proved their debts. 2. Notice of the time and place where any dividend will be paid shall be sent to the creditors, and shall be advertised. 3. Any creditor who has proved his debt may at any time apply to the Court for an order requiring the Assignee to proceed with the distribution of the assets of any estate forthwith, in such manner as the Court directs, having regard to the circumstances of the case. 4. In any such case the Court may make such order as it thinks fit, or may refuse to make any such order. 5. In the calculation and distribution of a dividend it shall be obligatory on the Assignee to make provision for debts provable appearing from the bankrupt's statements or otherwise to be due or owing to persons resident in places so distant from the place where the Assignee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs or to establish them if disputed, and also for debts provable in respect of claims not yet determined. 6. In the case of a dividend declared after the expiration of six months after adjudication, it shall not be obligatory on the Assignee to make provision for debts such as those referred to in the last preceding subsection, save where the Court otherwise orders. 7. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid a dividend or dividends out of any moneys for the time being remaining in the hands of the Assignee available for future distribution amongst the creditors, but he shall not be entitled to disturb the distribution of any dividend declared before he proved his debt. 8. Any creditor who has duly amended his proof after the declaration of a dividend shall, if his claim is increased by such amendment, be entitled to be paid a further dividend in respect of such increase out of any moneys for the time being remaining in the hands of the Assignee available for future distribution among the creditors; but he shall not be entitled to disturb the distribution of any dividend declared before the said proof was amended. 9. Any creditor who has duly amended his proof so as to reduce his claim after receiving a dividend shall refund to the Assignee the dividend received on the amount by which his claim is thus reduced. 10. The creditors of two or more bankrupts jointly shall not receive any dividend out of the separate property of any one of such bankrupts until his separate creditors have received the full amount of their respective debts, nor shall any separate creditor receive a dividend out of the joint property until the creditors of the bankrupts jointly have received the full amount of their respective debts. 11. When the Assignee has converted into money all the property of the bankrupt, or so much thereof as can in the joint opinion of himself and of the supervisors (if any) be realised without needlessly protracting the bankruptcy, he shall declare a final dividend. 12. Subject to the provisions of *The Bills of Exchange Act, 1908*, and subject to the power of the Court in any other case on special grounds to order production to be dispensed with, every bill of exchange, promissory note, or other negotiable instrument or security upon which proof has been made shall be exhibited to the Assignee before payment of dividend thereon, and the amount of dividend paid shall be indorsed on the instrument. — E. 46 & 47 Vic. c. 52, §§ 58, 60,

61. — For an application of subsection 7 see *In re McGregor*, Ex parte *McGregor*, 7 L. R. (N. Z.) 241. For an application of subsection 10 see *In re Robins and Day*, Ex parte *Gallagher*. L. R. 3 S. C. (N. Z.) 93.

Part XI. Discharge. Examination of bankrupt.

If Assignee or creditors desire it, bankrupt to be publicly examined. Notice of public examination. Assignee to file report. Assignee or creditor may examine bankrupt. Bankrupt's evidence admissible against him. When bankrupt deemed to have passed public examination. 124. 1. If the Assignee, at any time after adjudication and before the making of an absolute order of discharge, files in the Court a statement to the effect that it is desirable that the debtor should submit to a public examination, or if the creditors, at any meeting before the making of an absolute order of discharge, pass an ordinary resolution to the like effect, and a copy of such resolution verified by affidavit of the Assignee or chairman is filed in the Court, the Court shall hold a public sitting for the examination of the bankrupt on the next sitting-day after the expiration of seven days after notice of the filing of such statement or affidavit is served on the bankrupt; and the bankrupt shall attend thereat, and shall be examined as to his conduct, dealings, and property. 2. At least seven days' notice of the intention to hold such examination shall be advertised by the Assignee, and shall be sent to the creditors. 3. Prior to such examination the Assignee shall file in the Court a full report on the estate, and the conduct of the bankrupt, and on all other matters with which it is desirable for the purposes of this Act that the Court should be acquainted. 4. The Assignee, or any creditor who has proved his claim, or the solicitor for the Assignee or for any creditor who has proved his claim, may, without any notice to the bankrupt, examine him. 5. The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the Court puts or allows to be put to him. 6. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him notwithstanding anything contained in this Act, and they shall also be open to the inspection of any creditor or his solicitor at all reasonable times. 7. The bankrupt shall not be deemed to have passed his public examination until the Court, by order, declares that his affairs have been sufficiently investigated, and that his examination is finished. — E. 46 & 47 Vic. c. 52, § 17.

Application for discharge.

Bankrupt may apply for discharge at any time. Notice of application. 125.

1. A bankrupt may at any time after adjudication apply to the Court for an order of discharge; but if prior to the day of hearing a statement by the Assignee, or a copy of a resolution by the creditors, to the effect that it is desirable that the bankrupt should submit to a public examination has been filed, then the application for an order of discharge shall be adjourned until the said examination is finished. 2. Notice of the day on which the bankrupt proposes to make the application for discharge shall be advertised by the bankrupt and sent to the Assignee and all the creditors at least two weeks prior to the day so proposed. 3. A bankrupt shall apply for his discharge within four months of the date of his adjudication: a) If he fails to do so the Assignee may, by notice in writing, require him to apply for his discharge, and if he fails for ten days thereafter to take all necessary steps for this purpose the Assignee may apply to the Judge to have the bankrupt committed for contempt of Court; b) If it appears to the Assignee that the bankrupt is unable to pay the Court fees and outlay incidental to his application for discharge, such fees shall, on production, of a certificate by the Assignee to that effect, be remitted, and the Assignee shall take all necessary steps and pay out of the estate all other outlay in respect of the application for the bankrupt's discharge; c) The Judge shall have power to make such order in the premises as he thinks proper. — E. 46 & 47 Vic. c. 52, § 28; 53 & 54 Vic. c. 71, § 8.

Hearing of application.

The Court may examine Assignee. Assignee or any creditor may oppose and examine. Court may adjourn, and require creditor to furnish bankrupt with notice of objections. Assignee to file report. 126. 1. The Court, at the hearing, may examine the Assignee as to the bankrupt's conduct and affairs. 2. The Assignee or

any creditor who has proved his claim may, without notice to the bankrupt, oppose the bankrupt's application for an order of discharge, and may examine him as to any matter or thing relating to his estate, and as to his transactions and conduct, and as to the alleged causes of his inability to pay his debts. 3. The Court may adjourn the hearing of any such application as it thinks fit, and may require any opposing creditor to furnish the bankrupt before the time appointed for the adjourned hearing with a written statement of his objections to the bankrupt's discharge. 4. Prior to the day appointed for the hearing of an application for discharge, if he has not already done so, the Assignee shall file in the Court a full report on the estate and the conduct of the bankrupt, and on all other matters with which it is desirable that the Court should be acquainted. — E. 46 & 47 Vic. c. 52, § 28 (2). — A creditor may be estopped from opposing the debtor's discharge. — *In re Beere*, O. B. & F. (S. C.) (N. Z.) 195.

Powers of Court to grant absolute, suspended, or conditional discharges. 127.

On the hearing of an application for an order of discharge the Court may, in its own absolute discretion, either: a) Grant or refuse an immediate order of discharge; or b) Suspend the same from taking effect for such time as the Court thinks fit; or c) Grant an order of discharge to take effect upon the performance of any condition or conditions touching any salary, pay, emoluments, profits, wages, earnings, or income that may after the date of the order become due to the bankrupt, and touching property of the bankrupt acquired after the date of the order, or touching the payment of any of the preferential claims referred to in the next section hereof; or d) Grant an order, subject to the bankrupt consenting to judgment being entered against him by the Assignee for the whole or any portion of the balance of the debts provable under the bankruptcy that is not satisfied at the date of his discharge; but in such case execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available for the payment of his debts: Provided that the Court shall not grant any absolute and immediate order of discharge if it appears to the Court that the bankrupt has been guilty of any offence under this Act, or, where the Court is satisfied, upon the representation of any creditor or Assignee, that there is ground to believe that the bankrupt has been guilty of any such offence, or where the Court is of opinion that the bankrupt has been guilty of misconduct or gross negligence in the conduct of his business. — E. 53 & 54 Vic. c. 71, § 8. — The Court may suspend the order of discharge if it deems that the facts warrant it, even though there is no opposition to an immediate discharge by any creditor. — *In re Quinn*, 3 J. R. (N. S.) S. C. (N. Z.) 135. As to practice, see *In re Cummins*, 2 J. R. (N. S.) S. C. (N. Z.) 191; *In re Salmon*, 4 J. R. (N. S.) S. C. (N. Z.) 33; *In re Owen*, O. B. & F. (S. C.) (N. Z.) 144.

No discharge to be granted unless preferential wages, etc., paid. 128. A bankrupt shall not be entitled to an absolute order of discharge until all preferential claims mentioned in paragraph (d) of section one hundred and twenty hereof are fully paid and satisfied, unless with the consent of the persons entitled thereto. — This section applies only to cases where the wages creditors have proved their claim. — *In re Bissett*, L. R. 3 S. C. (N. Z.) 354. See also *In re Ford*, 8 L. R. (N. Z.) 156 (overruling *In re Dunningham & King*, 6 L. R. [N. Z.] 222).

Court may reverse order of discharge. Reversal must be asked for on facts newly discovered. Effect of reversal on third persons. After reversal Court may grant new order of discharge. 129. 1. At any time within two years after the grant of an absolute order of discharge, or after the taking effect of a suspended or conditional order of discharge, the Court may, on the application of the Assignee or of any creditor, reverse such order of discharge, if after notice to the bankrupt any facts are established to the satisfaction of the Court which, had they been known to the Court at the time of granting such order, would have justified the Court in refusing to grant the order or in imposing any conditions precedent to its taking effect. 2. No such application for a reversal of the order of discharge shall be entertained if the facts upon which it is intended to be based were known to or could by the exercise of reasonable diligence have been ascertained by the Assignee or the creditor making the application at the time of the granting of the order of discharge. 3. The reversal of any order of discharge shall not prejudice or affect the rights or remedies which any other person would have had in case such reversal had not been made, and any property acquired by the bankrupt since the granting of the order which is reversed, and vested in him at the date of such reversal, shall vest in the Assignee subject to any incumbrances thereon, and shall, in the first

instance, be applied by the Assignee in satisfaction of debts incurred by the bankrupt since the date of the order so reversed. 4. Upon the Court reversing such order of discharge, the Court may, then, or at any subsequent time, grant a new order of discharge, either absolute, suspended, or conditional.

Repeated applications for discharge. 130. Any bankrupt may apply for an order of discharge from time to time, unless the Court on any application fixes a period within which he shall not be entitled to make such application.

Court may grant absolute discharge notwithstanding failure to comply with conditions. 131. In case of failure to comply with the whole or any of the conditions fixed by the said conditional order of discharge, the Court may at any time grant an absolute order of discharge to the bankrupt on his application, if the Court is satisfied that the failure to comply with such conditions arises from circumstances for which the bankrupt cannot justly be held responsible.

Effect of discharge.

What debts discharge releases bankrupt from. 132. An order of discharge shall not release the bankrupt from: a) Any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party; b) Any debt or liability whereof he has obtained forbearance by any fraud to which he was a party; c) Any judgment debt for which he is liable under section one hundred and twenty-seven hereof; d) Any debt on a recognisance, and any debt with which the bankrupt may be chargeable at the suit of the Crown or any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the Sheriff or other public officer on a bail-bond entered into for the appearance of any person prosecuted for any such offence, unless the Minister of Finance certifies in writing his consent to his being discharged therefrom: but it shall release the bankrupt from all other debts provable in the bankruptcy. — E. 46 & 47 Vic. c. 52, § 30 (1, 2); 53 & 54 Vic. c. 71, § 10.

Order of discharge conclusive evidence of bankruptcy. 133. An order of discharge shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein; and in any proceedings instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by such order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence. — E. 46 & 47 Vic. c. 52, § 30 (3).

Discharge does not release partners, co-trustees, joint contractors, or sureties. 134. An order of discharge shall not release any person who at the date of adjudication was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him. — E. 46 & 47 Vic. c. 52, § 30 (4).

Discharged bankrupt to assist Assignee. 135. A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the Assignee or the Court requires in the realisation and distribution of such of his property as is vested in the Assignee; and if he without reasonable cause fails to do so he shall be guilty of a contempt of Court. — E. 46 & 47 Vic. c. 52, § 28 (7).

Part XII. Annuling of Adjudication.

When Court may annul adjudication. As to disputed debts when bankruptcy annulled. Notice of annulling to be advertised. 136. 1. In any of the cases following the Court may, by order, on the application of any person interested, annul the adjudication, and thereupon the adjudication shall be annulled from and after the date of the order annulling it, that is to say: a) Where, in the opinion of the Court, an order of adjudication ought not to have been made; or b) Where it is proved to the satisfaction of the Court that the debts of the bankrupt are fully paid or satisfied; or c) Where the Court has approved a composition, or in any other case where the Court, after examining the Assignee as to the bankrupt's conduct and affairs, is satisfied that the bankruptcy was caused by misfortune without any misconduct on the part of the bankrupt. 2. For the purposes of this section any debt disputed by the bankrupt shall be considered as paid or satisfied if he enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt with costs. 3. A notice of every order annulling an adjudication

shall be forthwith advertised by the Assignee. — E. 46 & 47 Vic. c. 52, §§ 14, 35. — Under the Debtors & Creditors Act, 1876, the Court had no power to annul. — Ex parte Mackay, In re Mackay, 2 J. R. (N. S.) (N. Z.) 164; Ex parte Findlay, In re Young, 4 J. R. (N. S.) S. C. (N. Z.) 41 (distinguishing *Harding v. Hooper*, L. R. 1 C. A. (N. Z.) 315). Under the Bankruptcy Act, 1883, it seems that an adjudication of bankruptcy could be annulled without proof that the debts had been paid in full. — Ex parte Firth, 11 L. R. (N. Z.) 7. When it appears that the order of adjudication should not have been made owing to the existence of an equitable ground against such adjudication, the adjudication may be annulled. — In re Ell, L. R. 3 S. C. (N. Z.) 433 (see also cases under § 39, *supra*). Unless the creditor was not given notice of the existence of such equitable ground. — In re Lowrie, 9 L. R. (N. Z.) 702. Where there is evidence of the existence of the petitioning creditor's claim, the adjudication will not be annulled on the petition of such creditor, unless he can show affirmatively that no act of bankruptcy had been committed. — In re McQuade, Ex parte Turner, 2 J. R. (N. Z.) 164. See also In re Warmoll, Ex parte Public Trustee, 7 L. R. (N. Z.) 84; *Harding v. Hooper*, 1 C. A. (N. Z.) 315. An election to take the benefit of a bankruptcy operates as a waiver of irregularity in the proceedings, and such creditor can not petition for annulment. — In re McCallum, L. R. 1 S. C. (N. Z.) 396. As to effect of composition, see *Levin v. Death*, 8 L. R. (N. Z.) 150.

Upon making of order annulling, property to revest in bankrupt. Annuling not to prejudice past acts of Assignee. Annuling to release Assignee. 137. 1. Upon the making of an order annulling an adjudication, all property of the bankrupt vested in the Assignee under the bankruptcy, and not at the date of the order annulling the adjudication sold or disposed of by the Assignee, shall revest in the bankrupt without the necessity of any conveyance, transfer, or assignment of any kind. 2. An order annulling an adjudication shall not prejudice or affect the validity of any contract, sale, disposition, or payment duly made or anything duly done by the Assignee prior to the making of that order. 3. An order annulling an adjudication shall have the effect of releasing the Assignee from his administration of the estate in like manner as if an order for his release had been made under section one hundred and fifty hereof. — E. 46 & 47 Vic. c. 52, § 35. — The revesting of the property in the bankrupt is subject to the provisions of any deed of arrangement that may have been made. — *Hurrey v. Bank of New South Wales*, L. R. 1 C. A. (N. Z.) 115 (decided under the Debtors & Creditors Act, 1876).

Part XIII. Penal.

Crimes by bankrupt. Trading on fictitious capital. Contracting debts. Omitting to keep books. Failure to keep usual books. Vexatious defences. Fraudulent gifts, etc. Concealing, etc., property before judgment. Speculation and extravagance, etc. Payments out of regular course of business. Failing to discover property. Not delivering up property, etc. Material omissions in statement. Not informing Assignee of false proof. Preventing production of book, etc. Destroying book, etc. Concealing or fraudulently removing property. Accounting for property by fictitious losses. Obtaining property on credit by fraud, etc. Fraudulently obtaining consent of creditors. Absconding. Getting credit as undischarged bankrupt. Giving fraudulent preference. 138. Every person adjudged bankrupt shall be deemed to have committed a crime, and on conviction is liable to two years' imprisonment with or without hard labour, who: a) Has carried on trade by means of fictitious capital; or b) Could not have had, at the time when any of his debts were contracted, any reasonable or probable expectation of being able to pay the same, as well as all his other debts; or c) Has, with intent to conceal the true state of his affairs, wilfully omitted at any time to keep proper books or accounts; or d) Has, within three years before the commencement of the bankruptcy, failed to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently set forth his business transactions and disclose his financial position; or e) Has put any of his creditors to unnecessary expense by frivolous or vexatious defence to any action or suit to recover any debt or money due from him; or f) Has with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property; or g) Has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him; or h) Has, by rash and hazardous speculations, gambling, drunkenness, or unjustifiable extravagance in living, brought about his bankruptcy; or i) Within three years before the commencement of the bankruptcy, has made payments out of the regular course of his business, not being for the ordinary expenses of himself or his family, unless it is proved

that such payments were justifiable; or j) Does not to the best of his knowledge and belief fully and truly discover to the Assignee all his property, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expenses of his family, unless it is proved that he had no intent to defraud; or k) Does not deliver up to or to the order of the Assignee: i) All such part of his property as is in his custody or under his control, and which he is required by law to deliver up, unless it is proved that he had no intent to defraud; and ii) All books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless it is proved that he had no intent to defraud; or l) Fails to deliver up possession to the Assignee of any part of his property which is divisible amongst his creditors, and which may for the time being be in his possession or under his control, unless it is proved that he had no intent to defraud; or m) Makes any material omission in any statement relating to his affairs, unless it is proved that he had no intent to defraud; or n) Knowing or believing that a false debt has been proved by any person under the bankruptcy, fails for the period of one month to inform the Assignee thereof; or o) After the presentation of a bankruptcy petition by or against him, prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless it is proved that he had no intent to conceal the state of his affairs or to defeat the law; or p) After the presentation of a bankruptcy petition by or against him, or within two years next before such presentation: i) Conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless it is proved that he had no intent to conceal the state of his affairs or to defeat the law; or ii) Makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless it is proved that he had no intent to conceal the state of his affairs or to defeat the law; or iii) Fraudulently parts with, alters, or makes any omission, or is privy to the fraudulently parting with, altering, or making any omission, in any document affecting or relating to his property or affairs; or q) After the presentation of a bankruptcy petition by or against him, or within two years next before such presentation: i) Conceals any part of his property to the value of ten pounds or upwards, or conceals any debt due to or from him, unless it is proved that he had no intent to defraud; or ii) Fraudulently removes any part of his property of the value of ten pounds or upwards; or r) After the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within twelve months next before such presentation, attempts to account for any part of his property by fictitious losses or expenses; or s) Within three years next before the presentation of a bankruptcy petition by or against him: i) By any false representation, or other fraud, or by any false balance-sheet or other false statement of his affairs, or under the false pretence of carrying on business and dealing in the ordinary course of trade, has obtained any property on credit and has not paid for the same, unless it is proved that he had no intent to defraud; or ii) Pawns, mortgages, pledges, or disposes of, otherwise than in the ordinary way of trade, any property which he has obtained on credit and has not paid for, unless it is proved that he had no intent to defraud; or t) Is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy; or u) After the presentation of a bankruptcy petition by or against him, or within twelve months before such presentation, quits New Zealand and takes with him, or attempts or makes preparation for quitting New Zealand and for taking with him, any part of his property to the amount of twenty pounds or upwards that ought by law to be divided amongst his creditors, unless it is proved that he had no intent to defraud; or v) Before he obtains his absolute order of discharge, or before a suspended or conditional order of discharge takes effect under this Act, obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt; or w) Has, within three months before the commencement of the bankruptcy, when unable to pay his debts as they became due, given, with intent to defraud his other creditors, an undue preference to any of his creditors. — Statements made by a bankrupt in answer to questions put to him at a meeting of creditors are admissible in evidence against him in criminal prosecutions under the Bankruptcy Act. — *Regina v. O'Neill*,

L. R. 3 C. A. (N. Z.) 298. See also *Regina v. Bratby*, 7 L. R. (N. Z.) 375, and § 124 (5), *supra*. The penal provisions of the Act can not be given a retroactive effect so as to apply to acts committed prior to the coming into force of the Act. — *Regina v. Harper*, 12 L. R. (N. Z.) 413. As to practice in sending telegraphic information of warrant, see *Hay v. Thomson*, 7 L. R. (N. Z.) 579. See also *In re Grindley*, 11 L. R. (N. Z.) 130 (under paragraph d); *In re Allen*, 11 L. R. (N. Z.) 133 (under paragraphs d and h); *Simpson v. Reginam*, 1 C. A. (N. Z.) 299 (under paragraph b); *Regina v. Vale*, L. R. 1 C. A. (N. Z.) 154 (under paragraph m); *Farnshaw v. Reginam*, 1 C. A. (N. Z.) 381 (under paragraph m).

Persons charged with a crime may be dealt with summarily. 139. Where any person is charged before Justices with a crime under the last preceding section, they may, if they think it expedient so to do, and if the person so charged, when informed by the Justices of his right to be tried by a jury, does not object to being dealt with summarily, deal summarily with the charge: Provided that the term of imprisonment to be awarded by such Justices shall not exceed six months with or without hard labour. — As to what constitutes a sufficient order for commitment, see *In re Crow*, L. R. 4 S. C. (N. Z.) 268; *Regina v. Bratby*, 7 L. R. (N. Z.) 375.

Bailee defined. 140. Every person who is in possession of the whole or any part of the estate of any bankrupt after such estate has become vested in the Assignee shall, with respect to the estate so in his possession, be deemed to be a bailee, and shall be liable accordingly.

Inserting notices in newspaper without authority an offence. 141. Every person who inserts or causes to be inserted in any newspaper any notice or advertisement under or purporting to be under this Act without authority, or knowing the same to be false in any material particular, commits an offence against this Act, and is liable for every such offence to a fine not exceeding twenty pounds, or to imprisonment for any term not exceeding three months with or without hard labour.

False declaration, etc. 142. Every person who wilfully and with intent to defraud makes any affidavit or statement of account for the purposes of this Act which is untrue in any material particular, knowing the same or any statement on which it is indorsed or to which it is appended to be untrue in any material particular, commits a crime, and is liable on conviction to be imprisoned for any term not exceeding two years with or without hard labour.

Miscellaneous.

Court to have power to commit for trial. 143. Every Court having jurisdiction in bankruptcy shall have all powers and jurisdiction requisite for the purpose of committing for trial any bankrupt where there is, in the opinion of the Court, ground to believe that the bankrupt has been guilty of any offence which is made a crime under this Act, and for granting or refusing bail to any such bankrupt. — E. 46 & 47 Vic. c. 52, § 165.

When Assignee's duty to prosecute. 144. It shall be the duty of the Assignee, when he has reason to suspect that any person has committed an offence under this Act, to lay the facts of the case, so far as he is acquainted with them, before any person acting as Crown Solicitor or Crown Prosecutor in the district of the Court which has jurisdiction in the bankruptcy in regard to which the offence is supposed to have been committed, and if such Crown Solicitor or Crown Prosecutor certifies that there are reasonable grounds for a prosecution, then the Assignee shall lay an information against such person. — See § 169, *infra*.

Prosecutions to be conducted as ordinary criminal prosecutions, and expenses paid by Crown. 145. Where any person is charged with a crime under this Act, and the certificate of the Crown Solicitor or Crown Prosecutor has been obtained to the prosecution as hereinbefore mentioned, the prosecution shall be conducted as an ordinary criminal prosecution, and all the expenses of the prosecution, including the expenses of the proceedings before the Justices, shall be allowed and paid out of any moneys appropriated by Parliament for criminal prosecutions, unless the Court orders the same to be paid out of the bankrupt's estate. — E. 46 & 47 Vic. c. 52, § 166.

Essentials of indictment. 146. In an indictment for a crime under this Act it shall be sufficient to set forth the substance of the offence charged, in or to the effect of the words of this Act specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, adjudication, or any proceedings in, or order, warrant, or document of any Court acting under this Act.

Indictment not to be quashed by technicalities. 147. No indictment shall be quashed for any technical defect therein, or any formal defect therein appearing on the face thereof, but every such indictment shall, either before or after verdict, as required, be amended by the Judge and the trial proceed as if such defects respectively had not occurred, and a conviction shall be had in every case where the evidence at the trial manifests that an offence has been committed.

Part XIV. Miscellaneous. Rights of the Crown.

This Act binds the Crown. 148. Save as herein provided, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition, and the effect of a discharge shall bind the Crown. — E. 46 & 47 Vic. c. 52. — As to the priority of the Crown under the Bankruptcy Act, 1883, see *In re Donne*, L. R. 4 S. C. (N. Z.) 321.

Accounts and audit.

Assignees to keep proper books of account. To be audited by Audit Office. Accounts, when audited, open to inspection. Assignee to prepare statement of accounts, and Audit Office to report thereon and to file report. Filed statement to be verified. Filing of statement and Auditor's report to be advertised. 149. 1. Every Assignee under this Act shall keep proper books of account, showing a debtor and creditor account of his receipts and payments, and of the balance belonging to each estate of which he is Assignee, in the prescribed form, and shall whenever required by the Court verify the same by statutory declaration. 2. The accounts of every Assignee or agent of the same, and of all estates coming into his hands, shall be audited by the Audit Office, and the Controller and Auditor-General shall have the same powers in respect to all moneys belonging to any estate in bankruptcy and to all persons dealing therewith as he has by virtue of any Act for the time being in force in respect to the public moneys and to persons dealing therewith. 3. The accounts so audited shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested. 4. Within one month after the notice of the distribution of a final dividend in any estate is advertised, or when the whole of the estate is realised if it is insufficient to pay a dividend, the Assignee shall prepare and submit to the Audit Office a statement of accounts and balance-sheet, showing in detail his receipts and payments in respect to such estate; and the Audit Office shall forthwith prepare a report on such statement of accounts and balance-sheet, and file such report and statement and balance-sheet in the Court, and give notice to the Assignee of such filing. 5. Every statement of accounts and balance-sheet so submitted shall be verified by a statutory declaration of the Assignee, and with the report of the Audit Office shall, when filed as aforesaid, be open to inspection without fee by the bankrupt, or by any creditor, or by any person interested. 6. Notice of the filing of every such statement of accounts and the report of the Audit Office shall be advertised by the Assignee. 7. If the Assignee is dissatisfied with any decision or finding of the Controller and Auditor-General, the Assignee may, within two months thereafter, appeal to the Judge, who shall give such decision thereon as he thinks proper. — E. 46 & 47 Vic. c. 52, §§ 78—81.

Release of Assignee.

Assignee may apply for order of release. Date of hearing. Hearing. When release withheld. Effect of release. Release, when revoked. Further release when further property discovered. 150. 1. The Assignee shall, after the advertising of the filing of the said statement of accounts and report, apply to the Court for an order releasing him from his administration of the estate, and shall advertise notice of his intention to make application for an order of release, and of the time at which he intends to make such application. 2. The hearing of the application shall be on a day not less than fourteen days and not exceeding thirty days after the advertisement of the intention to apply. 3. On the hearing the Court shall take into consideration the Auditor's report, and any objection which may be urged by any creditor or person interested against the release of the Assignee, and shall either grant or withhold the release accordingly. 4. Where the release of an Assignee is withheld, the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the Assignee with the consequences of any act or default he may have done or made contrary to his duty. 5. An order

of the Court releasing the Assignee of a bankruptcy shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as Assignee of the bankrupt up to date of such order. 6. Such order may be revoked only on proof that it was obtained by fraud. 7. If any further property of the bankrupt comes to the hands of the Assignee after the date of an order of release, he shall, after realising or otherwise dealing with such property, apply for and obtain, in the same manner and subject to the same conditions as before mentioned in respect of the first order of release, a further order of release in respect of his administration of such further property. — E. 46 & 47 Vic. c. 52, § 82.

Surplus moneys.

Before preparing statement of accounts, etc., moneys to be paid to Public Trustee. Moneys subject to Public Trust Acts. Bankruptcy Surplus Account. Bankruptcy Surplus Account, how disposed of. Amount of defalcations to be paid out of Bankruptcy Surplus Account. Bankruptcy Surplus Account subject to the Public Trustee Acts. 151. 1. Before preparing the statement of accounts and balance-sheet of any estate, as provided by section one hundred and forty-nine hereof, the Assignee, after deducting when necessary the costs of his release, shall pay any moneys belonging to such estate then standing to his credit into the Public Trust Office, and the Public Trustee shall hold the same subject to the claims of any person who afterwards appears to be entitled thereto. 2. All such moneys shall be deemed to be placed in the Public Trust Office subject to the Acts for the time being in force relating to such office, and subject also to this Act. 3. All unclaimed dividends and any other undivided surplus or other money unclaimed, the produce of any bankrupt's estate, shall, after the expiration of twelve months from the declaration of the final dividend, or from the time at which the surplus or other money became undivided or unclaimed in the Public Trust Office, be carried to a Bankruptcy Surplus Account, and shall be deemed one common and general fund, and may be promiscuously issued to answer the demands thereon. 4. Money for the time being standing to the credit of the Bankruptcy Surplus Account shall be subject to the order of the Court for the payment thereof of any dividend or for the distribution of any money in the matter to which any part thereof originally belonged, or for the payment thereof of any money required for the purposes of this Act and authorised to be so applied. 5. In case of any defalcation by an Assignee or any person employed under this Act, if there remains any deficiency after realising upon any security given by such Assignee or other person, the amount of such deficiency shall be paid out of the Bankruptcy Surplus Account, and the Public Trustee shall pay the same accordingly upon the requisition of the Minister of Justice, and without further appropriation than this Act. 6. Subject as aforesaid, the investment, realisation, and disposition of all or any moneys standing to the credit of the Bankruptcy Surplus Account, and of any profits accruing therefrom shall be subject to the Acts for the time being in force relating to the Public Trust Office. — E. 46 & 47 Vic. c. 52, § 162.

Bankrupt may be appointed assignee of his estate. 152. Where the Assignee has obtained an order of Court releasing him from his office in respect to any estate, and where it is probable that further assets may be recovered, the Court may appoint the bankrupt the assignee of his estate upon trust for the creditors therein until payment of their proved debts, and after payment of such debts in trust for his own benefit: Provided that before such bankrupt so appointed assignee is permitted to commence any suit or legal proceeding against any person alleged to be a debtor to such estate, he shall give security for the costs of such suit or proceeding to the satisfaction of the Registrar of the Supreme Court where such proceedings are to be commenced. — The words "the Court may appoint" give to the Court an absolute discretion as to the appointment of the bankrupt as assignee of his own estate. — *In re Ell*, 11 L. R. (N. Z.) 789.

Witnesses and evidence.

Deposition of deceased witnesses. Petition, etc., when admitted as evidence. Judicial notice to be taken of signature of Judges, etc. Copies of newspapers proof of notices. Advertisements may relate to more than one matter. Unnecessary to publish order of Court. Assignee's advertisements to be gazetted. 153. 1. In case

of the death of a witness whose evidence has been received by any Court in any proceeding under this Act, his deposition purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to. 2. Any petition, order, certificate, deposition, or proceeding under this Act purporting to be sealed with the seal of the Court, or any writing purporting to be a copy thereof and to be so sealed, shall, whether for purposes of this Act or not, be admitted as evidence of the document which it purports to be or whereof it purports to be a copy, and of the making of the orders and taking of the proceedings therein stated or referred to by the person at the time and in the manner therein or thereon stated or appearing, and shall be a record of the Court under the seal whereof it purports to be without further notice. 3. Judicial and official notice shall be taken of the signature of any Judge, Registrar, or Clerk acting under this Act, attached or subscribed to any judicial or official proceeding or document purporting to be made or signed in a matter of bankruptcy or other matter under this Act. 4. The production of copies of the newspapers containing any notice or advertisement by this Act directed or authorised to be advertised therein shall be admitted as conclusive proof in all legal proceedings of any matter therein contained and by this Act directed or authorised to be advertised. 5. Notices required by this Act to be advertised may be so framed as to comprise notices concerning more bankruptcies or more deeds or other matters than one in one advertisement. 6. It shall not be necessary to publish a copy of any order of Court made under this Act, and publication of notice of any such order shall, for the purposes of evidence, have the same effect as publication therein of a copy of the order, and all expenses for advertising shall be limited accordingly. 7. Notices required by this Act to be advertised by the Assignee shall, immediately after publication of the advertisement, be forwarded by the Assignee to the Government Printer to be gazetted free of cost to the estate. — E. 46 & 47 Vic. c. 52, §§ 132—136.

Notices and service of documents.

Documents, how served. Notices on persons, etc., outside New Zealand. Notices to corporations. Notices required to be served within limited time. Order staying proceedings, how served. Service of notice on partnership. Service on corporation. 154. 1. Notices or documents by this Act required to be served on or sent to any person, and not by this Act directed to be served personally, may be sent by post-letter or post-card, addressed to the last known place of business or abode of such person, subject to such regulations respecting registration and other things as the rules direct, or shall be served in such manner as the Court in any particular case orders. 2. Notices or documents of any kind required to be served on any person, corporation, or company not resident or carrying on business in New Zealand shall be deemed to be duly served for the purposes of this Act if served on the attorney or recognised agent within New Zealand of such person, corporation or company; or, if there is no such attorney or agent, then the Court may order service to be made within such time and in such manner and form as the Court thinks fit. 3. If any accredited agent of a corporation or company has, in the course of his agency, notice, of any act of bankruptcy, the corporation or company shall be deemed to be affected by such notice. 4. Notices required to be served within a limited time shall not be required to be served on a creditor who is not resident in New Zealand, or who has not resident therein a known duly authorised agent. 5. When the Court makes an order staying any action or proceeding, or staying proceedings generally, the order may be served by sending a copy thereof under the seal of the Court by prepaid post-letter to the address for service of the plaintiff or other party prosecuting such proceeding. 6. Notices or documents required to be served on a partnership for the purposes of this Act may be served upon one member of the partnership, or left at the usual place of business of the partnership. 7. Notices or documents required to be served upon a corporation may be served by posting or delivering the same to the manager, clerk, secretary, or other principal officer of such corporation at the registered office or other place where such corporation carries on business. — E. 46 & 47 Vic. c. 52, § 142.

Contempt of Court.

Neglect of duties by bankrupt, contempt of Court. 155. Every person commits a contempt of Court who: a) Assaults, threatens, intimidates, or insults a Judge,

or any Registrar, Clerk, bailiff, or officer of the Court, or any juror, suitor, or witness, during his sitting or attendance in Court, or in going to or returning from Court; or b) Interrupts or obstructs the proceedings of the Court or any meeting of creditors, or otherwise misbehaves in Court or at any such meeting; or c) Being summoned or examined as a witness in any proceedings in the Court, or before the Judge in Chambers, or before the Official Assignee, or Deputy Assignee, or a Magistrate, refuses without lawful excuse to attend or be sworn, or to answer any lawful question, or in the opinion of the Judge is guilty of wilful prevarication; or d) Writes or publishes, or causes or procures to be written or published, any letter, statement, or report, or does or causes or procures to be done any other act or thing likely to obstruct or in any way interfere with, prejudice, or affect the ordinary course and due and proper administration of justice; or e) Wilfully disobeys any lawful command or order of the Court or a Judge thereof; or f) Wilfully fails to discharge or perform any of the duties required by this Act to be performed by him, or to comply with the provisions of this Act; or g) Does any other act, or omits to do any other act, the doing or omission to do which is by this Act made contempt of Court.

Punishment for contempt. 156. 1. It shall be lawful for any constable, or for any bailiff or officer of the Court, where any such offence is committed in the Court or within the precincts thereof, by order of the Judge, to take such offender into custody and detain him until the rising of the Court; or it shall be lawful for the Judge in any such case, and in all other cases where the offence is not committed in the Court, by summons under his hand and sealed with the seal of the Court, to call upon the offender to appear before the Court, at such time and place as are therein named, to show cause why he should not be fined or imprisoned for such offence or default. 2. The Court, after hearing evidence, and on being satisfied that a contempt of Court as hereinbefore defined has been committed, may, by warrant under the hand of the Judge, and sealed with the seal of the Court (and that whether such offender appears to show cause or not), commit such offender to prison for any time not exceeding six months, or impose upon such offender a fine not exceeding fifty pounds for every such offence; and, in default of payment thereof, by warrant signed and sealed as aforesaid, may commit the offender to prison for any time not exceeding three months, unless the said fine be sooner paid. 3. In either of the cases aforesaid a warrant in the form or to the effect contained in the form numbered (3) in the second Schedule hereto shall be good and valid.

Appeal from order for imprisonment. 157. Any person so fined or committed to prison as aforesaid shall, where the warrant is made by a Judge of the District Court or by a Magistrate, be entitled to appeal therefrom to the Supreme Court of the district where the order is made: Provided that such person shall, within three days after the issue of the warrant, file in the office of the District Court or Magistrate's Court where the warrant was made a written notice of his intention to appeal, and the grounds thereof.

Case on appeal to be stated for Supreme Court. 158. Upon such notice being filed as aforesaid the Judge or Magistrate issuing the warrant shall, within seven days from such filing, state, sign, and deliver to the Registrar of the Supreme Court a case setting forth the circumstances under which the warrant appealed from was made, and the Clerk of the Court shall immediately on the said case being delivered as aforesaid give notice of such delivery to the appellant, who shall thereupon proceed to have the said appeal set down for hearing.

Appeal not to stay proceedings. 159. Such appeal shall not operate as a stay of proceedings unless the Judge of the District Court or the Magistrate so orders.

Appeal dismissed if not prosecuted. 160. If the appellant fails to prosecute the said appeal with due diligence, the Court appealed to shall order the same to be dismissed with or without costs.

No certiorari. 161. No warrant issued under section one hundred and fifty-six hereof shall be removed into the Supreme Court by *certiorari* or otherwise, and in every such warrant it shall be sufficient to set forth shortly the substance of the contempt, and in no case shall any such warrant be quashed, set aside, or declared void for any technical defect therein, or on account of any omission therefrom; and any such defect or omission may be amended or supplied at any

time by the Judge of the District Court, or the Magistrate, or by the Court appealed to.

Imprisonment to date from arrest. 162. The term of imprisonment stated in any such warrant shall commence to run and be calculated from the date when the offender is apprehended under the warrant.

Real property of foreign bankrupts.

When foreign bankrupt entitled to real property in New Zealand. 163. If any person who has been adjudged or declared bankrupt or insolvent by any British Court out of New Zealand, and has not obtained his discharge or certificate, is seised of or entitled to any real property in New Zealand, the Assignee, trustee, or other representative of his creditors may apply for and, on proof of such bankruptcy or insolvency, and of the want of such discharge or certificate, and without further evidence, obtain adjudication against him in the Supreme Court; and such adjudication shall have the like effect and consequences as if he had been originally adjudged bankrupt by that Court. — *Foreign bankruptcy.* The courts will recognize the title of an assignee in bankruptcy appointed at the domicile of the bankrupt to personalty situated in New Zealand, even though the debtor is temporarily in New Zealand, and has there executed an assignment for the benefit of his creditors. — *Cleve v. Jacomb, Mac. (N. Z.) 171.* But where a bankrupt has changed his domicile after his bankruptcy, property subsequently acquired by him in his new domicile does not pass to the old assignee, at least as against creditors in the new domicile (*quaere*, if there are no creditors in the new domicile). — *Strike v. Gleich, O. B. & F. (C. A.) (N. Z.) 50.* But a foreign bankruptcy confers no title on the trustee of the bankrupt in respect of immoveables situated in New Zealand. — *Ex parte Bettie, In re The Land Transfer Act, 14 L. R. (N. Z.) 129.* See also § 86, *supra*.

Other provisions.

Bankrupt may inspect books, etc. 164. A bankrupt may, at all reasonable times before discharge, and without fee, inspect his books and documents in the presence of the Assignee or any person appointed by the Assignee, and may bring with him each time any person to assist him.

Court officers and Assignee to produce petitions, etc., and allow copies. 165. The proper officer of the Court, and the Assignee of any bankrupt's estate, on the reasonable application of the bankrupt or of his solicitor, or of any creditor who has proved or of his solicitor, shall produce and show to the applicant all petitions, orders, proceedings, books, and documents relating to the bankruptcy, and the applicant may take copies or extracts thereof or therefrom as the rules direct.

Power of Assignee to return or destroy books. 166. The Assignee may, after two years from the date of the order of release in each case of bankruptcy, deliver up to the bankrupt or his personal representative all books of accounts deposited with him as Assignee, or destroy or otherwise dispose of them.

Bankruptcy proceedings not annulled by defects, etc. 167. The proceedings in any bankruptcy shall not be annulled or set aside by reason of any defect, misnomer, inaccurate description, or of the omission of anything required to be done in or concerning any such proceedings, provided that no person is injuriously affected thereby; and the Court may, in any case where any such omission or error is made, direct the same to be rectified, and shall order the proceedings to be continued upon such terms as it thinks best in the interests of all persons concerned. — *E. 46 & 47 Vic. c. 52, § 105 (3).* — See notes to § 28 and § 36.

Where bankrupt dies after adjudication. 168. If any bankrupt dies after adjudication, the proceedings in the bankruptcy shall be carried on and continued in all respects as if such bankrupt were living.

Protection of persons in execution of Act.

No action for malicious prosecution against Assignee. When action brought for anything done in pursuance of Court warrant. **Petitioning creditor must be made defendant.** In such case verdict for Assignee, etc. **Costs against petitioning creditor.** **Proof when defendant is petitioning creditor.** Assignee not liable for acts if adjudication set aside. **Notice of action against Assignee, and limitation of time for action.** **Place of trial of action.** **Defence in such action.** At trial plaintiff bound by his notice of action. **When tender of amends made. 169.** 1. No action shall lie against an Assignee for malicious prosecution by reason of any proceedings under this Act if taken upon the certificate of the Crown Solicitor or Crown Prosecutor, as

mentioned in section one hundred and forty-four hereof. 2. No action shall be brought against any Assignee, bailiff, assistant, or other person for anything done in obedience to any warrant of the Court, unless the party intending to bring such action has served on or left at the usual place of abode of such Assignee, bailiff, assistant, or person a written demand, signed by him, for the perusal of the warrant and for a copy thereof, and compliance with the demand has been refused or neglected for six days after such demand. 3. If, after such demand and compliance therewith, any person brings an action against such Assignee, bailiff, assistant, or person without making the petitioning creditor (if any, and if living) a defendant the jury at the trial of the action, on production and proof of the warrant, shall give their verdict for the defendant, notwithstanding any defect of jurisdiction in the Court by which the warrant was granted. 4. If such action is brought against the petitioning creditor and such Assignee, bailiff, assistant, or person, the jury shall, on proof of the warrant, give the verdict for such Assignee, bailiff, assistant, or person notwithstanding any such defect of jurisdiction. 5. If the verdict is given against the petitioning creditor, the plaintiff shall recover his costs against him, to be taxed so as to include such costs as the plaintiff is liable to pay to such Assignee, bailiff, assistant, or person. 6. In any action brought against the petitioning creditor, either alone or jointly with such Assignee, bailiff, assistant, or person, for anything done in obedience to the warrant, proof by the plaintiff that a defendant is petitioning creditor shall be sufficient for the purpose of making him liable in the same manner and to the same extent as if the act complained of in the action had been done by him personally. 7. The Assignee shall not be liable in any action or proceeding for or by reason of any act or thing done by him under any order of adjudication that is afterwards reversed or set aside. 8. No action or proceeding shall lie against any Assignee or other person acting under the authority or in the execution or intended execution or in pursuance of this Act, for any alleged irregularity or trespass, or any act or thing done or omitted by him under this Act, unless notice in writing (specifying the cause of the action or proceeding and the name and residence of the intending plaintiff or prosecutor, and of his solicitor or agent in the matter) is given by the intending plaintiff or prosecutor to the intended defendant one month at least before the commencement of the action or proceeding, nor unless the action or proceeding is commenced within three months next after the act or thing complained of is done or omitted, or, in case of continuing damage, within three months next after the doing of such damage has ceased. 9. Any such action shall be laid and tried in the place where the cause of action or a material part thereof arose, and not elsewhere. 10. In any such action the defendant may plead generally that the act or thing complained of was done or omitted by him as Assignee, or (as the case may be) when acting otherwise under the authority or in the execution or intended execution or in pursuance of this Act, and may give all special matter in evidence. 11. On the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action not stated in his notice. 12. The plaintiff in any such action shall not succeed if tender of sufficient amends is made by the defendant before the commencement of the action; and, in case no tender has been made, the defendant may, by leave of the Court in which the action is brought, at any time pay into the Court such sum of money as he thinks fit, whereupon such proceeding and order shall be had and made in and by the Court as may be had and made on the payment of money into Court in an ordinary action.

Stamps.

Documents exempt from stamp duty. 170. No stamp duty (other than fees under this Act) or any other duty shall be payable on: a) Any instrument for effecting a composition with creditors under this Act; or b) Any deed, conveyance, assignment, surrender, or other assurance relating solely to freehold or leasehold property, or to any mortgage, charge, or other incumbrance on, or any estate, right, or interest in any property part of the estate of any bankrupt, and which after the execution of such deed, conveyance, assignment, surrender, or assurance is or remains, either at law or in equity, the estate of the bankrupt or of the Assignee under the bankruptcy; or c) Any power of attorney, proxy, writ, order, certificate, affidavit, declaration, bond, receipt, or other instrument or writing relating solely to the estate of any bankrupt or to any bankruptcy under this Act. — E. 46 & 47 Vic. c. 52, § 144.

Commission.

Commission payable. Commission part of Consolidated Fund. 171. 1. There shall be payable in respect of proceedings under this Act the commissions set forth in Part III. of the third Schedule hereto, or such other commissions in lieu thereof or in addition thereto, or in respect of other matters under this Act, as the rules from time to time direct. 2. All such commissions shall be paid into the Public Account and form part of the Consolidated Fund.

Court fees remitted.

Court fees not payable in certain cases. 172. No Court fees shall be paid on filing the final statement of account, or any affidavit therewith, or the report of the Audit Office, or the notice of motion for release of the Assignee, or the sealing of the order of release.

Advertisements and postages paid out of Consolidated Fund.

Certain advertisements and postages to be paid out of Consolidated Fund. 173. The cost of advertising notices of adjudication, of the time and place of the first meeting of creditors, of the filing of the final statement of accounts, of the filing of the report of the Audit Office, and of the intention to apply for an order releasing the Assignee, and also the cost of all postages incurred by the Assignee, shall be paid out of the Consolidated Fund.

Costs.

Court may award costs, and scale may be prescribed. Where no costs appointed. Power of Assignee to pay costs up to £10. Bankrupt to pay no costs to solicitor save fee on filing. Solicitor's lien. 174. 1. The Court may, in all matters before it, award such costs as it deems fit, and the rules may prescribe a scale of costs to be allowed to solicitors and others in respect of proceedings under this Act, in addition to the costs actually paid out of pocket other than fees to counsel, and the Court may make such orders as to the taxation of costs as it thinks fit. 2. Where in any matter no special costs are appointed, the Judge shall fix the costs at the time of the hearing. 3. The Assignee may, if he thinks fit, pay any costs relative to proceedings in bankruptcy not exceeding ten pounds in amount, exclusive of necessary costs and disbursements; but no costs beyond that sum shall be paid except upon an order of the Court, and no costs that the Assignee is otherwise liable to pay shall be payable to any solicitor unless such solicitor renders his bill for the same within one month after being requested so to do by notice in writing from the Assignee. 4. A bankrupt shall not pay any money to his solicitor for costs, except the fee payable under this Act on the filing of his petition under this Act and a sum of two guineas towards his costs; and, except as aforesaid, any money so paid, either before or after adjudication, shall be recoverable by the Assignee before the Court in a summary way. 5. No solicitor shall have or be deemed to have any lien on any deed or instrument in his possession belonging to a bankrupt except for the actual amount of costs owing to him in respect to the preparation of such deed or instrument. 6. If, on any application made to the Court in any matter relating to any bankruptcy, the Court is of opinion that the application is vexatious or frivolous, or otherwise unnecessary, it may order that the solicitor by whom such application is made shall not be paid any costs by any person in respect of such application. — E. 46 & 47 Vic. c. 52, §§ 73, 128.

Application of Act.

Corporation, etc., not subject to Act. 175. No corporation, association, or company incorporated or registered under any Act in force for the time being relating to the incorporation or registration of corporations, associations, or companies shall be subject to the provisions of this Act. — E. 46 & 47 Vic. c. 52, § 123.

Act to extend to married women and to aliens. 176. This Act shall extend to married women, both to make them subject thereto and to entitle them to all the benefits given thereby, and shall in like manner extend also to aliens. — E. 46 & 47 Vic. c. 52, § 152.

*Schedules.**First Schedule.***Enactments consolidated.**

1892, No. 24. The Bankruptcy Act, 1892.

*Second Schedule.***1. Debtor's Petition.**

In Bankruptcy.

In the

Court of New Zealand,
District.

In the matter of "The Bankruptcy Act, 1908."
I, A. B., of [*Residence and occupation*], hereby petition to be adjudged a bankrupt, as I am unable to pay my debts. [*If the petition is to be filed in a Magistrate's Court, add: And I declare that my liabilities do not exceed three hundred pounds.*]

A. B.

Witness to signature:

C. D.,

Registrar [*or Solicitor, or Justice*].**2. Creditor's Petition.**

In Bankruptcy.

In the

Court of New Zealand,
District.

In the matter of "The Bankruptcy Act, 1908".
and

In the matter of [*Name, address, and description of debtor*].

To His Honour

, Judge of the above-mentioned Court.

The day of , 19 .

The humble petition of [*Name, address, and description of petitioner*], sheweth:

1. That the above-named debtor is indebted to your petitioner in the sum of [*Here give amount and particulars of debt, and when payable*].

2. That the above-named debtor has committed an available act of bankruptcy, as follows: [*Here state particulars of the act of bankruptcy, and state date of occurrence*].

3. That your petitioner has no security for the said debt [*or, if the petitioner is a secured creditor, he must give particulars of the security, and say that he is willing either to give up his security or estimate its value*].

4. [*If the petition is to be filed in a Magistrate's Court, add: That the liabilities of the above-named debtor do not exceed three hundred pounds.*]

5. Your petitioner therefore prays that the above-named debtor be adjudged a bankrupt.

A. B.

Witness to signature:

C. D.,

Registrar [*or Solicitor, or Justice*].**3. Warrant of Committal for Contempt of Court.**In the [*Insert name of Court*], holden at [*place*].

To the Bailiff of the said Court [*or A. B., Constable at* , and to all other constables at

These are to command you and every of you to apprehend A. B., of , and convey him to the said gaol, and to deliver him to the said keeper thereof; and you, the said keeper, are hereby required to receive him, the said A. B., into your custody in the said gaol, and him there safely to keep for the term of , unless the sum of £ is sooner paid: I, the undersigned, the Judge of the said Court, having now here adjudged the said A. B. to pay a fine of £ , and in default of immediate payment thereof to be imprisoned for the said term, for that the said A. B. [*Here state shortly substance of contempt*].

Given under my hand, and sealed with the seal of the said Court, at , this day of , 19 .

(L. S.)

Judge, etc.

*Third Schedule.***Part I. Supervisor's Remuneration.**

On the net receipts from the bankrupt's property, including the net receipts of his business if carried on after bankruptcy, but after deducting any sums paid to secured creditors out of the proceeds of or in respect of their securities, not exceeding:

	£	s.	d.	
On the first amount of £ 1000, or any less sum	2	10	0	per cent.
On the next amount of £ 1000, or any less sum	1	5	0	"
On all further sums	0	10	0	"

Part II. Assignee's Commission on Composition.

On the amount of the composition agreed to be paid, but in lieu of any commission under the next Part of this Schedule:

	£	s.	d.	
On the first amount of £ 1000, or any less sum	1	5	0	per cent.
On the next amount of £ 1000, or any less sum	1	0	0	„
On all further sums	0	10	0	„

Or such smaller percentage as may be fixed by the Court.

Part III. Assignee's Commission.

On the net receipts from the bankrupt's property, including the receipts of his business if carried on after bankruptcy, but after deducting any sums paid to secured creditors out of the proceeds of or in respect of their securities:

	£	s.	d.	
On the first amount of £ 1000, or any less sum	5	0	0	per cent.
On the next amount of £ 1000, or any less sum	2	10	0	„
On all further sums	1	0	0	„

Commercial Trusts Act.

No. 32 of 1910. An Act for the Repression of Monopolies in Trade or Commerce (21st November, 1910).

Short title and commencement. 1. This Act may be cited as the *Commercial Trusts Act, 1910*, and shall come into operation on the first day of January, nineteen hundred and eleven.

Interpretation. Application of Act. 2. 1. In this Act, unless the contrary intention appears: "Commercial trust" means any association or combination (whether incorporated or not) of any number of persons, established either before or after the commencement of this Act, and either in New Zealand or elsewhere, and: a) Having as its object or as one of its objects that of (i) controlling, determining, or influencing the supply or demand or price of any goods in New Zealand or any part thereof or elsewhere, or that of (ii) creating or maintaining in New Zealand or any part thereof or elsewhere a monopoly, whether complete or partial, in the supply or demand of any goods; or b) Acting in New Zealand or elsewhere with any such object as aforesaid; and includes any firm or incorporated company having any such object, or acting as aforesaid; "Association" includes the union of any number of persons by or under any agreement or trust, whether temporary or permanent, and whether legally valid or not, and whether including any scheme or organization or common management or control or not; "Member of a commercial trust" means any of the constituent persons of that trust, or any agent of that trust, and, where any such constituent person or agent is a corporation, firm, or association, includes every member or agent of that corporation, firm, or association; "Person" includes a corporation, and as used in the foregoing definitions of "commercial trust", "association", and "member of a commercial trust" includes also a firm of partners or any other association or combination of persons. 2. Nothing in this Act shall apply to any goods other than those specified in the Schedule hereto.

Illegal concessions in consideration of exclusive dealing. 3. Every person commits an offence who, either as principal or agent, in respect of dealings in any goods, gives, offers, or agrees to give to any other person any rebate, refund, discount, concession, allowance, reward or other valuable consideration for the reason or upon the express or implied condition that the latter person: a) Deals, or has dealt, or will deal, or intends or undertakes, or has undertaken, or will under take to deal, exclusively or principally, or to such an extent as amounts to exclusive or principal dealing, with any person or class of persons, either in relation to any particular goods or generally; or b) Does not deal, or has not dealt, or will not deal, or intends, or undertakes, or has undertaken, or will undertake not to deal, with any person or class of persons, either in relation to any particular goods or generally; or c) Restricts or has restricted or will restrict, or intends or undertakes or has undertaken or will undertake to restrict, his dealing with any person or class of persons, either in relation to any particular goods or generally; or d) Is or becomes or has been, or has undertaken or will undertake to become, a member of

a commercial trust; or e) Acts or has acted or will act, or intends or undertakes or has undertaken or will undertake to act, in obedience to or in conformity with the determinations, directions, suggestions, or requests of any commercial trust with respect to the sale, purchase, or supply of any goods.

Illegal refusals to deal. 4. Every person commits an offence who, either as principal or agent, refuses, either absolutely or except upon disadvantageous or relatively disadvantageous conditions, to sell or supply to any other person, or to purchase from any other person, any goods for the reason that the latter person: a) Deals, or has dealt, or will deal, or intends to deal, or has not undertaken or will not undertake not to deal, with any person or class of persons, either in relation to any particular goods or generally; or b) Is not, or has not been, or will not become or undertake to become, or has not undertaken to become, a member of a commercial trust; or c) Does not act, or has not acted, or will not act, or does not intend to act, or has not undertaken or will not undertake to act, in obedience to or in conformity with the determinations, directions, suggestions, or requests of any commercial trust with respect to the sale purchase, or supply of any goods.

Illegal monopolies. 5. Any person who conspires with any other person to monopolize wholly or partially the demand or supply in New Zealand or any part thereof of any goods, or to control wholly or partially the demand or supply or price in New Zealand or any part thereof of any goods, is guilty of an offence if such monopoly or control is of such a nature as to be contrary to the public interest.

Sales at prices fixed by a commercial trust. 6. 1. Every person commits an offence who, either as principal or agent, sells or supplies, or offers for sale or supply, any goods at a price which is unreasonably high, if that price has been in any manner directly or indirectly determined, controlled, or influenced by any commercial trust of which that person or his principal (if any) is or has been a member. 2. Every person commits an offence who, in obedience to or in consequence of or in conformity with any determination, direction, suggestion, or request of any commercial trust, whether he is a member of that trust or not, sells or supplies, or offers for sale or supply, any goods, whether as principal or agent, at a price which is unreasonably high.

Sales by a commercial trust. 7. 1. If any commercial trust, whether as principal or agent, sells or supplies, or offers for sale or supply, any goods at a price which is unreasonably high, every person who is then a member of that trust shall be deemed to have committed an offence against this Act. 2. If in any such case the commercial trust is a corporation, it shall itself be guilty of an offence against this Act; but the liability of the trust shall not exclude or affect the liability of its members under the last preceding subsection.

When prices are to be deemed unreasonably high. 8. For the purposes of this Act the price of any goods shall be deemed to be unreasonably high if it produces, or is calculated to produce, more than a fair and reasonable rate of commercial profit to the person selling or supplying, or offering to sell or supply, those goods, or to his principal, or to any commercial trust of which that person or his principal is a member, or to any member of any such commercial trust.

Aiding and abetting offences against this Act. 9. Every person who aids, abets, counsels, or procures, or is in any way knowingly concerned in the commission of, an offence against this Act, or the doing of any act outside New Zealand which would if done in New Zealand be an offence against this Act, shall be deemed to have committed that offence.

Penalty. 10. 1. Every person who commits an offence against this Act shall be liable to a penalty of five hundred pounds. 2. If two or more persons are responsible for the same offence against this Act, each of those persons shall be severally liable to a penalty of five hundred pounds, and the liability of each of them shall be independent of the liability of the others.

Penalties recoverable by action in the Supreme Court. 11. Every such penalty shall constitute a debt due by the offender to His Majesty the King, and shall be recoverable, together with costs of suit, by a civil action in the Supreme Court, instituted by the Attorney-General for and in the name of His Majesty.

Supreme Court may reduce penalty. 12. In any such action the Supreme Court may remit such part of the aforesaid penalty of five hundred pounds as it thinks fit, and may give judgment for the residue of the penalty only.

Injunction against repetition or continuance of offences. 13. In any such action the Supreme Court may, in addition to the said penalty, grant an injunction against the continuance or repetition of the offence; but no such injunction shall be granted by way of interlocutory proceedings before final judgment in the action.

Joinder of parties, and causes of action. 14. 1. In any such action claims may be joined for the recovery of penalties in respect of several offences, whether of the same or of different kinds. 2. In any such action several persons may be joined as defendants, whether in respect of the same or of different offences, and whether those offences are committed by the same or by different parties; and in any such case separate judgments may be given in respect of each defendant so joined. 3. In the case of any such joinder of causes of action or of parties the Supreme Court may give such directions as it thinks fit for the separate trial of any cause of action against any defendant.

Evidence. 15. 1. In any action for the recovery of a penalty or for an injunction under this Act the Supreme Court may, in proof of any fact in issue, admit and accept as sufficient such evidence as it thinks fit, whether such evidence is legally admissible in other proceedings or not. 2. In any action for the recovery of a penalty or for an injunction under this Act, no person, whether a party to the action or not, shall be excused from answering any question put to him by interrogatory or otherwise, or from producing or making discovery of any document, on the ground that the answer to the question or the production or discovery of the document would tend to criminate him in respect of any offence against this Act.

Schedule.

Goods to which this Act applies.

Agricultural implements.

Coal.

Meat.

Fish.

Flour, oatmeal, and the other products or by-products of the milling of wheat or oats.

Petroleum or other mineral oil (including kerosene, naphtha, and the other products or by-products of any such oil).

Sugar.

Tobacco (including cigars and cigarettes).

Fiji.

Bibliography.

A. Collections of statutes.

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Ordinances of the Colony of Fiji: a new edition prepared under the authority of "The New Edition of the Ordinances Ordinance 1903". 1875—1905. Suva, 1906.

Ordinances of Fiji. Annual. Suva.

(The laws enacted by the Native Regulation Board for the government of the natives under authority of "The Native Affairs Ordinance 1876" have not been consolidated.

B. Reports.

Udal, John Symonds: The Fiji Law Reports. Cases determined by the Supreme Court of Fiji. (1875—1897.) Suva, 1903.

Introduction.¹⁾

History and government.

The Crown Colony of Fiji embraces, in addition to the group of islands commonly designated as the Fiji Islands, the Island of Rotumah²⁾.

The Fiji Group was discovered by Tasman in 1643, and visited by Captain Cook and others during the 18th century. Early in the 19th century Wesleyan missionaries from the Tonga Islands established themselves in Fiji, and a small immigration, especially from Australia and New Zealand, began.

Legendary evidence is to the effect that Fiji was once a unified monarchy, but during the whole of the period from the first settlement of the Islands by whites to the time of the establishment of English rule (1835—1874) the country was torn by civil war, and divided among a number of petty chiefs each striving to secure the mastery of the principal islands.

The destruction by natives of property belonging to American citizens involved one of the more powerful chiefs, Thakombau, in difficulties with the United States, and he was forced to agree to pay an indemnity of forty-five thousand dollars. Unable to meet this demand, and deserted by his former ally, Maafu, Thakombau was induced to offer the sovereignty of the Islands to Great Britain (12th October, 1858). Early in 1860 a British Commissioner was sent to the Islands to report on the conditions. The report, however, was unfavorable, and the proffered cession was declined by the British Government. In the mean time the number of white settlers was constantly increasing. The native wars rendered life and property insecure. In 1869 the white inhabitants addressed a petition to the Government of the United States requesting it to assume a protectorate over the Islands. These efforts also proved futile.

Finally, in 1874, King Thakombau, joined by a number of other chiefs, made another offer of cession to Great Britain, which was accepted, and on the 10th October of that year the Fiji Islands formally passed to the British Crown³⁾.

By the Charter of 2d January, 1875⁴⁾, the Islands were erected into a Crown Colony. Under this Charter, as amended 1st October, 1880⁵⁾, the Islands were given a constitution and government similar to that of the other Crown Colonies.

¹⁾ The writer desires to express his indebtedness to the Honourable A. W. Mahaffy, Assistant to the High Commissioner for the Western Pacific, for copies of the Fiji ordinances, and other valuable information. — ²⁾ Letters Patent of 17th December, 1880. Statutory Rules and Orders. Rev. 1904. Vol. IV. "Fiji", p. 6. — ³⁾ An historical account of the various proposals of cession, and a reprint of the correspondence, is contained in De Ricci, Fiji, Our New Province in the South Seas, chaps. 8, 17. — ⁴⁾ St. R. & O. Rev. 1904. Vol. IV. "Fiji", p. 1. — ⁵⁾ Ibid. p. 4.

The Imperial Parliament originally reserved the power to legislate directly for the Colony, and exercised this right in the Fiji Marriage Act, 1878 (41 & 42 Vict. c. 61). This right was abrogated in 1904, but the power of applying and adapting the provisions of Imperial Acts by Order in Council is retained¹⁾.

The present Constitution of Fiji is contained in the Letters Patent of 21st March, 1904²⁾, as amended by Letters Patent of 30th August, 1905³⁾, 25th July, 1907⁴⁾ and 25th August 1911). Under this Constitution the legislative power is vested in a Legislative Council consisting of the Governor, ten official, six elected, and two native members. The Native Regulation Board, in Fiji, and the Rotumah Regulation Board, in Rotumah, have the power of initiating legislation for the native population of their jurisdictions, subject, however, to confirmation by the Legislative Council.

Law in force.

By "The Past Laws Temporary Continuance Ordinance"⁵⁾ the proclamation of 14th October, 1874, adopting all laws, acts and statutes then in force in New South Wales, was declared to be valid and binding, "so far as the same shall be applicable to the circumstances of this Colony." By "The Supreme Court Ordinance"⁶⁾ it was enacted that the common law, the rules of equity, and the statutes of general application in force in England on 2d January, 1875, so far as applicable to the conditions in Fiji, should be the rule of decision. The question which of these provisions is in force is discussed in the case of *Turner v. Sherrard*⁷⁾. "This of course suggests the question whether it can possibly have been intended that two separate and distinct bodies of general law (those of England and New South Wales) should be co-existent in Fiji. I think that this is impossible; that therefore the provision of the Supreme Court Ordinance operates as a repeal by necessary implication of the legislative adoption of New South Wales laws; and that the last mentioned laws thereupon ceased to have effect except, perhaps, such of them as may since have been universally acted upon and accepted"⁸⁾.

The English law of contracts remains substantially unmodified. "The Native Dealings Ordinance, 1904"⁹⁾ requires that certain contracts between non-natives and natives shall be submitted to a magistrate, and be registered. "The Indemnity, Guarantee and Bailment Ordinance, 1881"¹⁰⁾, repeals the fourth section of the English Statute of Frauds (29 Chas. II. c. 3), and permits contracts of indemnity and guaranty to be entered into by parol agreement. In other respects this Ordinance is in substance a re-enactment of the provisions of the common law relating to the topics named. "The Bills of Sale Ordinance, 1879"¹¹⁾, follows closely the English "Bills of Sale Act, 1878" (41 & 42 Vict. c. 31).

The law relating to partnerships, joint-stock companies, and foreign companies is principally contained in "The Partnership Consolidation and Limited Liability Ordinance, 1878"¹²⁾, as amended by "The Bankruptcy Ordinance, 1889"¹³⁾, "The Partnership Amendment Ordinances, 1905—1909"¹⁴⁾ and "The Partnership Ordinance, 1910." It has been held that the sections of the Partnership Ordinance relating to partnerships are merely declaratory of the common law, and that resort may be had to the common law to add to the provisions of the Ordinance¹⁵⁾.

The sections of the Ordinance, as originally adopted in 1878, relating to the winding-up of joint-stock companies were repealed by the Bankruptcy Ordinance, 1889¹⁶⁾, and the provisions of the English law, so far as applicable, were adopted¹⁷⁾. There is no provision for the registration of foreign companies other than those organized under the laws of England or of a British Colony¹⁸⁾.

The first Bankruptcy Ordinance was adopted in 1877. This has now been replaced by the Ordinance of 1889¹⁹⁾, which is based on the English Bankruptcy Act, 1883 (46 & 47 Vict. c. 52). The Bills of Exchange Act (45 & 46 Vict. c. 61) has been re-enacted in "The Bills of Exchange Ordinance, 1891"²⁰⁾, and the Com-

1) Ibid. p. 674. — 2) Ibid. p. 674. — 3) St. R. & O., 1905 p. 1443. — 4) St. R. & O., 1907 p. 1157. — 5) No. II of 1875. — 6) No. XIV of 1875. — 7) 1883. Fiji L. R. 90. — 8) Per Fielding Clarke, Acting C. J., Ibid. p. 92. — 9) No. III of 1904, as amended by No. V of 1907. See also "The Rotuma Native Dealings Ordinance, 1895," (No. XIX of 1895). — 10) No. VIII of 1881. — 11) No. VIII of 1879. — 12) No. VII of 1878. — 13) No. XVI of 1889. — 14) Reprinted below. — 15) *Brown v. Montrose*, 1892. Fiji L. R. 289. — 16) No. XVI of 1889. — 17) *Cp. Union Bank of Australia Ltd v. Sharpe, Fletcher & Co. Ltd.* 1885. Fiji L. R. 108. — 18) *Cp. The Partnership Ordinance, 1878*, § 183, as amended by No. VIII of 1905. — 19) No. XVI of 1889. — 20) No. III of 1891.

monwealth of Australia Act relating to marine bills of lading (1904, No. 14) is copied in "The Sea-Carriage of Goods Ordinance, 1906"¹⁾.

Courts and procedure.

"The Supreme Court Ordinance, 1875"²⁾, vests the principal jurisdiction in the Supreme Court, consisting of a Chief Justice. This court is a court of record, and has within the Colony the jurisdiction of English courts of common law, equity, probate, and divorce. Under the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vic. c. 27) and an Order in Council, the Supreme Court is constituted a Vice-Admiralty Court³⁾. It is both a court of original jurisdiction and a court of appeal from the Local courts of the Colony⁴⁾, and from the High Commissioners Court of the Western Pacific⁵⁾. An appeal lies from the Supreme Court to the Judicial Committee of the Privy Council, where the amount of the judgment is £ 500 or over. Such appeal must be asked within twenty-one days from the date of the rendition of the judgment, and the appellant is required to furnish security not exceeding £ 500 within three months⁶⁾.

Under the Pacific Order in Council, 1893⁷⁾, the Supreme Court of Fiji has also original jurisdiction to try in Fiji any civil or criminal cause arising at any place within the limits of the Order.

The procedure before the Supreme Court in the exercise of its municipal jurisdiction is analogous to that of the English courts. The procedure and practice of the Supreme Court of Judicature in England governs wherever the local Ordinances or Rules of the Supreme Court do not otherwise provide. In exercising the jurisdiction conferred under the Pacific Order in Council, 1893, the Supreme Court may adopt either the procedure usual in Fiji or that laid down in the Order⁸⁾.

There are also Magistrates' Courts with limited civil and criminal jurisdiction, and Native Courts⁹⁾.

Statutes.¹⁰⁾

Partnership Consolidation and Limited Liability Ordinance, 1878.

a) Ordinance No. III of 1878.¹¹⁾ An Ordinance to consolidate and amend the law of Partnership and to provide for the constitution of Joint Stock Companies with Limited Liability (15th June, 1878).

Short title. 1. This Ordinance may be cited for all purposes as "*The Partnership Consolidation and Limited Liability Ordinance, 1878.*"

I. General principles of partnership.

Definition. 2. 1. Partnership is a contract by which two or more persons agree for the purpose of making profit to join together in business and mutually to contribute a common fund or capital. 2. The contract must be one of pure consent, and the free choice of one partner by the other or others is of the essence of the contract. 3. As the contract has been entered into by consent it can at any time be dissolved by consent.

New partners. 3. A new partner cannot be introduced to the partnership without the consent of all the partners. The consent of the majority will not suffice.

¹⁾ No. XIV of 1906. — ²⁾ No. XIV of 1875. — ³⁾ Queen v. The Emma Fisher. 1891. Fiji L. R. 269. No admiralty jurisdiction exists under the Ordinances. The Duke of Edinburgh. 1877. Fiji L. R. 6. — ⁴⁾ Cp. Emosi Basu v. The Queen. 1897. Fiji L. R. 358. — ⁵⁾ Order in Council, 15th March, 1893. St. R. & O. Rev. 1904, Vol. V. "Foreign Jurisdiction", p. 484. — ⁶⁾ Order in Council of 31st May, 1910. — ⁷⁾ St. R. & O. Rev. 1904, Vol. V. "Foreign Jurisdiction", p. 484. — ⁸⁾ Ibid. The Queen v. Martell. 1897. Fiji L. R. 355; The Queen v. Nau Taunebo. 1895. Fiji L. R. 327. — ⁹⁾ Ordinance No. V of 1876; Ordinance No. XXV of 1876. — ¹⁰⁾ As in force 1st January, 1912. — ¹¹⁾ Sections 2—146 and section 153 of this Ordinance were repealed by the *Partnership Ordinance, 1910* (Ord. No. 22 of 1910). The law relating to partnership is now assimilated to that of England. These repealed provisions are reprinted because the Fiji Ordinance of 1878 is in force in North Borneo, and is referred to in the article on the commercial law of that country.

Sub-partners. 4. One partner may take a sub-partner to participate in his share of the partnership, but such sub-partner is not a partner in the partnership.

In case of fraud. 5. The contract is essentially one of good faith among the partners both in its beginning and its progress and it can be set aside at any time on fraud being established.

Maximum number of partners. 6. The number of partners in a private partnership shall not exceed twenty.

Infant may become partner. 7. An infant may be a partner, but under the law with regard to infants he is not responsible for the debts of the partnership if he repudiates his liability on coming of age.

In case of lunacy. 8. 1. If a partner was a lunatic at the time of entering into the contract, and the fact was concealed from any of the partners, the fraud will be a sufficient ground for setting aside the contract. 2. If the lunacy was known to the other partners they cannot afterwards set aside the contract on that ground, but it may at any time be set aside by those acting for the lunatic. 3. If the contract has been entered into by the lunatic in a lucid moment and is a transaction in good faith as regards the other partners, any supervening lunacy will not invalidate the right of the lunatic to his share of the profits, and his property will be subject to the debts of the partnership. 4. If a partner sane at the time of entering into the contract shall become insane during the partnership it shall be at the option of the remaining partners to continue the partnership according to the terms of the contract or to dissolve the partnership.

Married woman may become partner. 9. A married woman may, with the consent of her husband, enter into a contract of partnership and when such consent has been given by the husband signing the articles of partnership the wife shall be entitled to act as a *feme sole* with regard to the partnership.

Undertaking must be lawful but may be of a general nature. 10. The undertaking into which the partners enter must be a lawful one but need not be any particular business, as a valid partnership may be constituted for purposes of a general nature to speculate in any way which may appear to offer profit.

Partner to share in profits. 11. The partnership must be for the purpose of making profit in which each of the partners shall have a share.

Participation in profits. 12. It is not necessary that each partner actually participate in the profits whatever amount of profit may be made, because a partner may validly stipulate on account of the greater share of the fund which he advances that one or more of the partners shall not receive anything unless a certain amount of profit has been made. It is enough that each partner shall have a fair chance of making profit and that the conditions of the contract are not manifestly unjust.

Losses to be borne mutually. 13. The partners in the contract of partnership bear the loss mutually if they fail to make profit and incur loss, but it shall not be unlawful for a partner to stipulate as between himself and the other partners that he shall not be liable to contribute to the loss.

Shares in profit and loss. 14. The shares in the profit and the proportion of responsibility for loss may be equal or unequal according to the agreement of the partners, or *pro rata* according to the amount each has contributed to the common fund; but where no stipulation has been made and there is no guide to the intention of parties the shares in the profit and loss shall be taken to be equal.

Share in profits without being a partner. 15. While partners share in profit and are liable for loss a mere participation in profits does not necessarily make the participator a partner. A manager or servant of a partnership may have a share in the profits as his wages and yet not be a partner.

Proof of partnership. 16. The mere fact that the participator in the profits is the manager or servant of the partnership does not necessarily exclude him from being a partner. The fact whether he is a partner or not depends upon the intention of parties when he was admitted to share profits, and must be judged of according to the facts and circumstances of each case.

Persons may participate in profits without being liable as partners. 17. The advance of money by way of loan upon a contract in writing to receive a rate of interest varying with the profits, or even a share of the profits, will not of itself make the lender a partner. A widow or child of a partner may receive a portion of profits by way of annuity without incurring liability for the debts of the part-

nership. The vendor of the goodwill of a business may receive a portion of the profits in consideration of the sale without being subject to the liabilities of a partner.

What may constitute capital. 18. The fund which the partners contribute or, as it is commonly called, the capital of the partnership need not necessarily consist of money. One may contribute his skill, or his labour, or goods, or real estate, or the goodwill of a business, and generally it may be said that anything which the partners themselves consider to have value may be contributed to the common fund.

Where labour or skill is contributed. 19. Where the contribution of the partner is labour or skill or something which bears no ratable proportion to the money supplied by others it is the more necessary that the share of the profits to which each partner is entitled should be fixed at the time of making the contract. If no proportion is fixed the contributor of the skill or labour shall be entitled to receive profits in proportion to the smallest sum of money advanced by the other partners.

Where capital exceeds one hundred pounds or duration of contract exceeds twelve months. 20. No partnership in which the common fund or capital exceeds the value of one hundred pounds sterling, and the duration of the contract exceeds, or by the nature of the engagement must exceed, twelve months can be pleaded or proved in actions between the partners themselves, unless the contract has been embodied in articles of partnership. If a partner has been admitted subsequent to the articles his admission may be proved by letters, writings, or facts and circumstances.

As to existing partnerships. 21. Existing partnerships shall until their termination be subject to the rules of the law anterior to this Ordinance as regards the necessity of articles, but all future contracts of partnership shall, with the exception aforesaid, be embodied in articles of partnership.

II. The different kinds of partnership.

Kinds of partnerships. 22. Partnerships are either public or private.

Public partnerships. 23. Public partnerships are either corporations, joint stock companies where the liability of the partners is unlimited, or joint stock companies where the liability of the partners is limited to the amount of capital represented by the shares taken up by each partner.

Benefit and provident societies. 24. The associations which are known by the name of benefit, industrial, or provident societies are not regarded as coming within the general law of partnership but as being subject to the special laws by which they are regulated and authorised.

Corporations. 25. Corporations are incorporated by Royal Charter, Statute, or Ordinance into one body having a special designation, perpetual succession, and a common seal, thus enabling the corporation to act and to sue and be sued as an individual.

Joint stock companies. 26. A joint stock company with unlimited liability of partners as it existed before the alteration of the law of England which permitted companies to be formed on the principle of limited liability is not illegal in this Colony, and all the rules which are hereinafter set forth with regard to joint stock companies limited shall be applicable to such companies, except that the holders of the shares shall be liable *pro rata* according to the number of their shares for the debt of the company.

Native communities. 27. The native communities of the Colony shall not be treated as public partnerships under the provisions of this Ordinance.

Liability of private partnerships. 28. In all private partnerships the liability of the partners has hitherto been unlimited, that is the partners are responsible for the loss to the extent of their fortunes, but a mixed species of private partnership is made legal by this Ordinance in which there may be members fully responsible and others who only contribute funds who are not liable beyond the amount contributed. The law regarding the old form of such partnerships where the liability of all the partners is unlimited is first treated of and then the new form where the liability of some of the partners may be limited.

Limited partners may be responsible as ordinary partners in certain cases. 29. If those who are not partners at all, or who may be limited partners only, hold themselves out to others as ordinary partners, and in this manner cause them to enter into contracts, or make advances, or sell goods on credit, or in any other way to become creditors, the individuals who so represent themselves shall be held bound by their representations.

Liability of dormant partners. 30. A person who enters into a partnership without notification and continues in it for the purpose of sharing in the profit as a dormant partner shall be liable to creditors during the time he remained a partner in the same manner as an ordinary partner.

III. The ordinary private partnership where the liability of members is unlimited.

(i) The partnership property.

Partnership property. 31. The whole property, real and personal, original and acquired, of the partners as a whole in connection with the partnership shall be held as belonging to the partnership under the firm name, style, title, or designation, and the partnership to that effect shall be regarded as a juridical person, and it shall be capable of sustaining the relation of creditor, and have the right to sue, and of sustaining the relation of debtor, and the liability to be sued, each partner having a contingent right to his share of the property when the debts shall be paid and the property divided, but having no right while the partnership lasts to dispose of the property except for partnership purposes, and on the other hand each partner remaining liable for the debts of the partnership.

Partnership may be sued in name of firm. 32. The partnership itself may be lawfully sued by entering as the name of the defendant the firm name, style, title, or designation under which the partnership conducts its ordinary business; and a writ left at the ordinary place of business of such partnership, or with a manager, clerk, shopman, operative, or servant therein, or delivered personally to any one partner shall be a sufficient service upon the said partnership and upon the individual partners thereof, and judgment may be given thereon which shall be a good judgment against the partnership as in the case of any ordinary defendant to an action.

Partnership may sue in name of firm. 33. The partnership may sue under the firm name, style, title, or designation by which it conducts its ordinary business without requiring to insert as a plaintiff the name of any individual partner, and a judgment obtained in any action in which the writ shall be so sued out shall be a good judgment and may be enforced by all the remedies competent to an ordinary plaintiff.

Real estate may form capital. 34. Real estate may form part of the capital of a partnership.

Liability thereof. 35. The real property may form part of the partnership property although the title may be in name of one or more of the partners, and be liable for the debts of the company, or be treated as personalty on the death of a partner.

Real property not necessarily partnership property. 36. On the other hand, land may be contributed to the partnership fund not as a portion of the capital but simply for the purpose of cultivation, the property remaining in the individual partner and the use solely belonging to the partnership.

Titles to land may be taken and transferred in name of partnership. 37. Titles to land may be taken in the name of the partnership under its ordinary name, style, title, or designation, and a transfer of the same may be validly made under the firm name, style, title, or designation when subscribed to the transfer by one of the partners. Mortgages and encumbrances may be granted and created in the same manner, and the transfers, mortgages, or encumbrances shall when so subscribed be held to have been done with consent of all the partners.

Property to be applied to the payment of debts. 38. The partnership property must first be applied to the payment of partnership debts, and each partner has a right to have the same so applied before any individual partner, or his creditors or representatives, can claim any right therein.

Where partners may claim individually &c. 39. Each partner has a claim on the partnership property for all funds advanced by him, and the partnership has also a claim for the repayment to the partnership of whatever has been taken by one partner beyond his share.

Claims against individual partners. 40. No creditor of an individual partner can acquire any right, title, or interest in the partnership property even as the

consequence of a judgment, except for so much as belongs to the partner after all claims on the partnership as a whole are deducted and satisfied; and the mode of putting any such judgment in force shall be by attachment of the partner's share of profit and property and not by seizure and sale.

(ii) *Powers and authorities of partners.*

Partner may bind partnership in relation to its ordinary business. 41. Each partner is *præpositus negotiis societatis*, and while the stipulations in the articles of partnership bind the partners *inter se* in regard to the extent of their powers as regards the public each partner can bind the partnership by his acts in relation to the partnership business. This, however, is subject to the limitation that it must be in relation to the partnership business as ordinarily conducted, because one partner has no authority to bind his co-partners to obligations which both he and the persons with whom he dealt must have known to be beyond the ordinary scope of the business and of the powers ordinarily exercised by partners.

Ordinary trading transactions may be entered into by any partner. 42. In ordinary trading partnerships the buying and selling of goods, the drawing, accepting, and indorsing of bills, the granting of cheques upon the partnership bank account, the borrowing of money within ordinary limits for trade purposes, the granting of receipts, the ordering of insurances, the payment of debts, the granting of Custom House bonds, and the pledging of partnership property for partnership purposes are all within the scope of the agency entrusted to each partner.

With regard to the granting of warranties &c. 43. In partnerships where it is part of the ordinary business to grant warranties or guarantees, the guarantee of one partner shall bind the whole; but where that is not the ordinary course of the business of the partnership the holder of the guarantee will require¹⁾ to prove that it was done with the consent of the firm.

Reference of dispute. 44. One partner has no authority to refer a matter in dispute to arbitration in name of the partnership without their consent.

Contracts not binding in certain cases. 45. Contracts will not bind the partnership which have been made by one partner with a party who has knowledge or notice that the partner is acting beyond his powers or in fraud of the firm.

Acceptance of the firm given for a private debt. 46. Where a partner gives a bill, or acceptance, or indorsement of the firm in payment of his private debt, the firm will not be bound to the person accepting such a payment, unless he can prove that the partner was authorised or otherwise establishes the *bona fides* of the transaction. If the bill is in the hands of third holders the partnership shall be liable, unless the circumstances show that the holder was aware of the nature of the transaction.

Application of partnership money to private use. 47. Where money has been raised by one partner upon the faith of the partnership signature, and such partner applies the money to his own private debt, the firm will be bound when the party advancing the money had no knowledge of the object to which it was to be applied.

Application of partnership securities. 48. The same rules will apply to the application of the securities or property, real or personal, of the firm in payment of the private debt of a partner.

Where money has been advanced to individual partner. 49. Where money has been advanced to a partner upon his individual credit and responsibility, although the money be paid into the firm account and employed for partnership purposes, the person making the advance must go against the individual partner who obtained it upon his own credit.

Responsibilities of new partner. 50. A new partner by joining an old firm shall make himself liable like the other partners for the debts of the firm.

Where a partner is accepted as debtor in place of firm. 51. Where a partnership has been originally liable for a debt, and the creditor by arrangement accepts one of the partners as his debtor in place of the partnership, such acceptance will extinguish the debt against the firm.

Where retiring partner ceases to be responsible. 52. If a creditor in like manner continues to accept of the partnership as the debtor after the retirement of a partner has been duly notified to him the responsibility of the retiring partner ceases.

¹⁾ *Sic.* "Will be required" (?).

Notice of discharge of partner from responsibility to be given to creditor. 53. But as the principle of the discharge which is here assumed is that the creditor had notice of the partnership in its altered condition and accepted it as his debtor there must be no doubt of the notice which ought to be both personal and public in the manner set forth in a subsequent section, the latter form being sufficient intimation to those who have subsequent dealings with the firm that the partner has retired, and the former being necessary in the case of the actual creditors of the firm at the date of retirement.

Liability for torts. For frauds. For injuries to persons or goods. For slander. For frauds on the revenue. Liability in certain cases only. 54. 1. The partnership is liable for torts committed by the partners or the servants of the partnership in the course of carrying on partnership business. 2. The partnership is liable if one of the partners fraudulently dispose of property consigned to the custody and care of the partnership. 3. The partnership is liable for injuries to goods or persons caused by the want of care or want of skill of the partners or servants of the firm in the carrying on of the ordinary business of the firm. 4. A partnership of publishers shall be liable for the printing and publishing of a slander by the firm on the authority of one of the partners in the course of the business of the firm. 5. The partnership will be liable for frauds committed on the revenue by one of the partners in conducting the business of the firm. 6. The tort to render the firm liable must be committed in carrying out the business of the firm within the ordinary scope thereof or the act must be indorsed and accepted by the firm.

(iii) Rights and duties of partners.

Duties of partners. 55. As good faith is of the essence of the contract each partner must devote himself faithfully to the interests of the partnership and bring to the discharge of his duties all the skill and diligence of which he is possessed and must exercise in conducting the business sound judgment and discretion.

Responsibility for loss. 56. If any loss be sustained to the partnership from the gross negligence, unskilfulness, fraud, or misconduct of a partner, the partner is responsible to the partnership.

Responsibility for breach of articles. 57. A partner is responsible to the partnership for intentional breaches of the articles of partnership.

Responsibility for false representations. 58. If a partner makes any false representations to his partners, or conceals from them facts in connection with the business, and thereby makes profit to himself, he must make good to the partnership the profit so obtained.

Rule as to bonuses &c. 59. If a partner makes any private stipulations with third persons for bonuses or premiums for himself in connection with the business of the partnership he must account therefor to the partnership.

Inability of partner in certain cases. 60. 1. A partner cannot enter into any other business or engagement which will interfere with the proper performance of his partnership duties. 2. Nor can he make purchases or sales on his private account which would interfere with the bargains of the firm or lessen their profit. 3. A partner cannot enter upon any other undertaking which would give him a direct interest contrary to that of the partnership, but the position must be one not merely of temptation to act in such a manner but an obvious antagonistic interest.

Books must be kept. 61. As one of the chief duties of partners is to account faithfully to the partnership for all transactions, it is absolutely necessary to keep business books in which everything done by each shall appear and be accounted for.

Withholding accounts presumption of fraud. 62. The withholding of accounts by one partner from the firm shall be of itself a presumption that fraud has been perpetrated or was intended.

Access to books. 63. All the partners are entitled to know the full extent of the partnership affairs and to have free access to the books on all occasions, unless they have intentionally limited their powers by the articles.

Duty of partners. 64. The partners must devote their whole time skill and care to the business of the partnership without other compensation than their chance of profit.

Salaries and private expenditure of partners. 65. The articles shall state what sum each will be entitled to draw for his private expenditure, and there may also be a stipulation that one or more shall receive a sum by way of salary before profits are estimated, but unless this stipulation be clearly set forth the presumption will be against any salary being payable.

Charges to be borne by firm. 66. Partners are entitled to charge the firm with all expenditure and losses properly incurred in transacting the partnership business.

(iv) Articles of partnership.

Articles of partnership. 67. In this Ordinance (section twenty) it has been made necessary for all partnerships where the capital exceeds one hundred pounds sterling and the duration exceeds twelve months to be constituted by articles of partnership.

Stipulations to be inserted. 68. It is not necessary to insert in articles of partnership the general principles applicable to all contracts of partnership but only such stipulations as without being stipulated would not be implied by law.

Agreements to form partnership. 69. Agreements may be entered into to form a partnership which are not the partnership articles, and should any of the partners fail to carry out the agreement, it is hereby enacted that such preliminary agreements cannot be enforced so as to compel persons who are unwilling to enter into partnership, but an action will lie for damages for breach of agreement wherever any of the parties had proceeded in fulfilment of it to contract engagements, to realise funds, or do any other act which involved pecuniary obligations or loss in virtue of the agreement.

Construction of articles. 70. The articles of partnership are construed like other contracts according to the intention of parties, and they shall always be construed so as to defeat fraud and the taking by any partner of an unfair advantage over his co-partners.

Variation of articles. 71. If partners do not faithfully observe the articles of partnership among themselves, and a practice spring up on any points at variance with the articles, it will not be competent for one partner thereafter suddenly to attempt to enforce the articles, but the practice will be taken as a virtual alteration or repeal of the articles by consent of all. The articles may be varied during the partnership with consent of all the partners.

Where a specific business is carried on. 72. When the partnership is entered into for the carrying on of a specific business the legal tribunals in the event of dispute shall construe strictly the description of the business set forth in the articles so that the partnership be not turned from its legitimate ends.

Date of commencement. 73. The time for commencement of the partnership shall be carefully set forth. If no date is specified it will be held to commence from the date of the articles.

Name of firm to be defined. 74. The name or style by which the firm is to be known shall be defined by the articles, as it is under the common name that the partnership will not only carry on its transactions but also that under which it will sue or be sued. The name need not include any of the existing partners.

Signature of firm. 75. Every partner is bound scrupulously to adhere to the partnership name when signing letters, cheques, contracts, bills, and all documents in connection with the partnership affairs.

Duration of partnership. 76. The articles shall set forth the duration of the partnership, but whatever time be stated the death of a partner brings the partnership to an end unless there are stipulations to the contrary.

Termination by consent. 77. A partnership can at any time be brought to an end by consent of all the partners, even where the stipulated term for its existence has not expired.

Death of partner need not terminate partnership. 78. If the articles stipulate that the death of a partner shall not necessarily put an end to the partnership, a clause may empower the representative of the deceased partner to carry on the business with the survivors for the benefit of the widow and children of the deceased partner, and for the admission of one or more of the children as partners on their arrival at majority.

Where interest is given to the widow. 79. If the interest in the partnership be given to the widow during her life and to the children after her death it is only the children who survive the mother who are entitled to a share.

Disposition of share by will or otherwise. 80. The articles may empower the partners to provide by will or otherwise for the disposal of their share in the event of death. If the will leaves the executors the freedom of declining should they not consider it wise or expedient to continue the partnership, the death of the party then puts an end to the partnership.

Share of deceased partner. 81. The articles shall contain provisions for the manner in which the share of a deceased partner shall be estimated and paid, should there be no intention to admit the representatives into the business.

One or more partners may conduct business. 82. It may be stipulated that one or more of the partners shall have the direction of the business of the company, and these provisions will be enforced by the legal tribunals.

As to secret manufactures. 83. There may be special cases where a partnership is formed for working some manufacture which is a secret, and in such cases it will be competent for the partner who is in possession of the secret to make such stipulations as shall protect him in the working thereof.

Computation of capital. 84. The clauses in connection with the contribution of the capital shall bring to a money valuation such items as lands, buildings, book-debts, and other property which may be contributed in order that the capital account may be clearly set forth.

Profits. 85. Provision shall be made for balances and division of profits.

Accounts when agreed to be conclusive. 86. It may be provided to prevent future disputes that the accounts as agreed to at any particular time shall be conclusive, but no such provision will bar an inquiry into fraud.

Employees. 87. The mode of hiring and dismissing employees of the firm shall be provided for.

Retirement of partner. 88. The mode of permitting a partner to retire from the firm, either with or without liberty to carry on the same trade, and the purchase of his share by the firm or otherwise may be stipulated.

Dissolution and winding-up. 89. The steps necessary to be taken upon dissolution, the mode of winding-up, and the settlement of controversies shall be provided for, and it shall be competent for the partners to provide that any of their number may be expelled from the partnership should his conduct or pecuniary entanglements be such as to compromise the credit of the firm.

(v) Remedies against partners and third parties.

Firms may sue and be sued. 90. 1. A partner may sue the partnership under the firm, style, name, title, or designation, and the partnership may in like manner sue a partner for any matter or thing in relation to which a cause of action has arisen. Two firms may sue each other although some of the partners may be partners in both, or any member of either firm may sue either or both. 2. Third parties may sue the partnership, and the partnership may sue third parties, in the same way as ordinary plaintiffs may sue, but when judgment has been given against the partnership the execution will not lie against the separate partners unless the firm has no effects. Where the judgment has to be enforced by imprisonment it will be competent to proceed against one or other of the partners at the choice of the holder of the judgment.

Private debts of partner. 91. Where judgment has been given against a partner for a private debt the share of profit and share of partnership property belonging to such partner may be attached in the hands of the firm, but it shall not be competent to proceed to seizure and sale of the property of the firm for the separate debt of a partner.

Existence of firm. 92. The juridical person of the firm will be taken to be in existence after the active operations of the partnership have ceased, or after the partners have entered into a new contract, for all purposes connected with the receiving and paying the debts of the firm, and generally for the purpose of winding-up, but for that only.

One partner may sue another. 93. One partner may sue another for all matters or things unconnected with the partnership, and even for matters arising out of the partnership if the interests of the firm are not necessarily involved.

Denial of access to books. 94. Any partner who has been denied access to the books or papers of the firm, or who has reason to believe that one or more of the partners have made profit from the partnership without disclosing it, may

sue the firm for an account, and this right extends to the executor, administrators, or representatives of a deceased partner. Such action may be sued without its being necessary to ask for a dissolution of the partnership, but the Supreme Court may decree the dissolution should circumstances emerge during the inquiry which induce the belief that mutual concert and agreement between the parties is thenceforth impossible.

(vi) Dissolution of partnership.

Partnership may be dissolved. 95. A partnership may be dissolved by the act or consent of the partners, or of some of them, or by the judgment of a competent Court, or by the mere operation of law, or by the extinction or completion of the thing in regard to which the partnership was formed, or by the lapse of time for which it was originally contracted, or by the death or bankruptcy of a partner.

Dissolution by consent. 96. All partnerships whether a period has been fixed for the termination of the contract or the duration is merely dependent on the will of the partners can be brought to an end by mutual consent, the whole existence of the contract depending upon the consent of the parties who made it. A partnership which has no fixed term may be dissolved at the desire of either of the partners and even by acts which are inconsistent with the continuance of the partnership.

Dissolution must be publicly announced. 97. Although the original contract has been made by deed under seal it is not necessary that the dissolution be effected in the same way. The resolution to dissolve publicly announced as afterwards provided for will be sufficient.

Dissolution may be decreed by the Court. 98. A partnership which is to endure for a stated period cannot be brought to an end by the mere will of one of the partners, but any partner may apply to the Supreme Court for a dissolution on sufficient cause shown.

Partnerships at will. 99. When the term for which the partnership was originally formed has elapsed, and no notice of dissolution has been given, and no new articles of partnership entered into, but the partners have continued the business without any change, the association between them will be treated as a partnership at will under the name, terms, and conditions, so far as applicable, which are set forth in the original articles, these for the purposes required by section twenty hereof being taken to be the articles of the continued partnership.

Court may end partnership on cause being shown. 100. 1. The causes for which a partnership may be brought to an end by the Court on the application of a partner although the fixed term has not elapsed are generally those which arise subsequently to the formation of the contract from the misconduct, fraud, or violation of duty of one or more of the partners. 2. The misconduct or violation of duty must not be trivial or in regard to other relations of life, unless they have a tendency to injure the credit or interfere with the business of the partnership. 3. The Supreme Court may be applied to for a dissolution because of the impracticability of carrying out the partnership from a change of circumstances or a failure of expectations.

Insanity a cause. 101. It has already been provided in section eight subsection four that supervening insanity of any partner may be a cause for dissolution at the choice of the partners. The insanity must be such as is likely to continue and not a merely temporary malady.

Also absence of partner. 102. The prolonged absence of a partner, his residence out of the country, his change of domicile, or engaging in pursuits incompatible with his duty to the partnership may all be good grounds for the dissolution of the partnership by a Court of law, even where the term has not expired.

Question of dissolution may be referred. 103. The partners may refer to arbitration the question of dissolution before the agreed on term, and an award decreeing dissolution shall be a competent award, and even where the question of dissolution has not been expressly referred if the differences between the partners have been referred and the arbitrators have awarded a dissolution that shall be a competent award.

Effect of outlawry &c. 104. The outlawry of a partner or his attainder for treason or felony operates as a dissolution of the partnership.

Effect of female partner marrying. 105. A female partner marrying may continue as a partner, but the husband shall have no right arising from his *jus*

mariti or otherwise to interfere with the affairs of the firm, but she shall act in the affairs of the partnership as a *feme sole*; but the marriage of a female partner during the tenure of the partnership may be a good ground for applying to the Supreme Court to decree a dissolution under the particular circumstances of the case.

Voluntary assignment. 106. The voluntary assignment by one or more of the partners of all their right, title, and interest in the partnership property dissolves the partnership.

Attachment of profit and share of partner by creditor. 107. The attachment of the profit and share of property in the firm of one partner by a creditor may be a ground for a dissolution of the partnership, but only by appealing to the Supreme Court to decree the dissolution.

Bankruptcy of partner. 108. The bankruptcy of one or more of the partners acts as a dissolution of the contract, as the whole property of the partner passes to the trustee in the bankruptcy and the bankrupt ceases to have the power of free action necessary to the discharge of his duties as partner.

Death of partner. 109. The death of a partner dissolves the partnership among all the survivors from the date of the death, unless the contrary has been provided in the articles of partnership.

Winding-up. 110. In all such cases of dissolution, as the affairs of the firm must be wound up the partnership subsists for that purpose and that alone, and the debts may be collected and paid in the name of the firm by the whole or some or one of the partners nominated for that purpose, and the accounts adjusted.

Rights of third parties in regard to liabilities. 111. The dissolution of the partnership does not change the rights of third parties in regard to liabilities due by the firm, and they are entitled to be paid out of the partnership assets and where these are insufficient by the partners or the estate of a deceased partner. Where the partnership assets are insufficient it is not necessary for the creditors to sue each partner, but the action will continue to lie against the firm under its ordinary name, style, title, or designation, until the winding-up is finished, and judgment having been obtained and the partnership having no assets the judgment may be put in force against the individual partners.

Partnership in liquidation. 112. In order that there may be no confusion between a partnership which is subsisting solely for the purpose of winding-up and one which is in actual operation, the words "in liquidation" shall be added to the name of the firm in course of winding-up on its ordinary place of business, and as the heading of all bills and demands made upon debtors, and in all documents relating to the winding-up, and in any legal proceedings instituted by or against the firm the like words shall be added to the ordinary name, style, title, or designation, according as the firm are plaintiffs or defendants.

Notice in cases of liquidation. 113. On the dissolution of a partnership it is necessary to give public notice to prevent partners being held liable as such for the acts of their co-partners after dissolution, and it is hereby enacted that in addition to the words "in liquidation" being added to the name of the firm an advertisement in the Gazette, and a notice of the dissolution published in the newspapers of the Colony, shall be sufficient public notice within the Colony, but creditors of the partnership are entitled to separate private notice by writing.

(vii) Special provisions relating to dissolution by bankruptcy.

Bankruptcy. 114. The partnership as a trader may apply to be adjudicated bankrupt on the same grounds as a sole trader, or the partnership may be made bankrupt compulsorily by creditors in the same manner as a sole trader.

Partnership in plantations. 115. Where the partnership has been formed to work a plantation it is considered to be a trader for the purposes of the Bankruptcy Ordinance.

Firm adjudicated bankrupt. 116. The firm may apply to be adjudicated bankrupt without an adjudication being asked for against the individual partners, and the creditors may apply for adjudication against the firm alone without seeking an adjudication against the individual partners.

Effect as against individual partners. 117. Where the firm applies to be adjudicated bankrupt without an adjudication against the individual partners any creditors of the requisite amount may apply for adjudication against the individual partners.

Partners may apply for adjudication. 118. Where creditors have applied for adjudication of bankruptcy against the firm and not against the individual partners it will be competent for the partners to make an application to have themselves adjudicated bankrupt.

Special adjudication against partners. 119. The creditors applying for adjudication of bankruptcy against the firm may apply for adjudication against one or more of the individual partners without applying for adjudication against the whole, and one or more of the partners may apply for adjudication against themselves when that is competent without the whole having so applied.

Power of trustee in certain cases. 120. When adjudication of bankruptcy has been granted against the firm only, either on the voluntary application of the firm or compulsorily at the instance of creditors, without the individual partners being adjudged bankrupt, and the trustee shall find either in the course of his investigations or at the conclusion thereof that the contributions required from any of the individual partners to pay the debts of the firm are greater than they can pay or provide for, or if he has reason to believe that any individual partner is disposing of his separate property without awaiting the result of the investigation, or is preparing to leave the country, or in any other way acting so as to prejudice the rights of the creditors under the bankruptcy, it shall be competent for the trustee to apply for an adjudication of bankruptcy against such partner or partners.

Bankruptcy of partner, — effect of. 121. Creditors cannot apply for an adjudication of bankruptcy against the firm for debts due by an individual partner, but they may apply for the bankruptcy of the separate partner, and if granted his bankruptcy operates as a dissolution of the partnership, which may then be wound up either by the firm in liquidation or by an adjudication of bankruptcy against the firm should that be applied for in a competent manner.

Court may appoint same trustee. 122. Where adjudication of bankruptcy against the firm is accompanied or followed by adjudication against the individual partners the Court may appoint the same trustee to wind up the different estates where such a course shall appear best for all concerned.

Concurrent winding-up: duty of trustee. 123. Where there is a concurrent winding-up of the estate of the partnership and the separate estates of the partners it is not necessary for the trustee to await the completion of the winding-up of the partnership estate before he declares any dividend on the estate of the individual partners; or *vice versa* should he be satisfied that there are sufficient funds in either estate to pay the deficiency on the other or should he make sufficient allowance for the probable claims against either before striking the amount of the dividend. The share of the surplus of the individual partner from the partnership estate will become an asset of his individual estate, and where there is no surplus but a deficiency the deficiency in whole or in part according to the solvency of the other partners will rank as a debt upon the separate estate.

Partners may prove against partnership. 124. Partners subject to their liability for any deficiency in the partnership assets may prove against the partnership estate for any debts due to themselves personally, and especially where the claim of the partner proving is founded upon a fraudulent appropriation of his separate property to the purposes of the partnership.

Where partners are members of another firm. 125. If one or more of the partners should be members of another partnership, or carrying on another trade, such partnership or partner as trader may prove for such partnership or trade debts in the same manner as ordinary creditors against the partnership or the estates of individual partners.

Partnership may prove against bankrupt partner. 126. The partnership may prove as a creditor against the estate of a bankrupt partner for any sums owing by him, and especially the partnership may also prove for sums fraudulently abstracted by the individual partner to swell his own estate.

IV. The new form of partnership with limited liability of certain partners.

New form of partnership. 127. A partnership may consist of two classes of partners, one class consisting of one or more partners being responsible for the

debts of the partnership as ordinary partners, and another class which may also consist of one or more partners who are contributors to the capital solely and not active members of the partnership, and whose liability for the debts of the concern shall be limited to the amount of capital contributed by them.

Designation. 128. The name of the partnership shall include one or more of the partners whose liability is unlimited together with the addition "and company" to cover the partners not named; and it shall not be necessary to add anything to such a designation to show that any of the partners are mere contributors to the capital and not active members of the partnership; but the insertion of the name of any contributory in the name, style, title, or designation of the firm shall of itself make him an ordinary partner.

Terms and conditions to be stated in articles. 129. The terms and conditions of such partnerships must be set forth in articles of partnership whatever the amount of the capital or period of duration of the partnership, and these articles must disclose the partners whose liability is unlimited, and the names and the amount of contribution to the capital of those partners who are not to interfere in the active management of the partnership, and not to be responsible beyond the amount contributed, and their respective rights and interests in the partnership.

Abstract of articles. 130. It shall not be necessary to register such articles (except under any general provisions for the registration of deeds and documents now in force or to be hereafter enacted), but an abstract of the same shall be registered in the office of the Registrar-General in a book properly indexed to be kept by him for the purpose, in which an abstract or vidimus prepared by the parties thereto and certified as correct by one of the partners whose liability is unlimited or by a solicitor of the Supreme Court shall be recorded and preserved.

Must be registered. 131. Such abstract shall set forth as nearly as may be in the form contained in Schedule A hereto annexed the date when the articles of partnership were entered into, the name of the company, the nature of the business, the date of the commencement of the partnership and its duration, the names of the partners whose liability is unlimited, the amount of capital of the company, and the sums contributed by partners whose liability is limited. It shall not be necessary to disclose in such abstract the names of the partners who merely contribute to the capital.

Fees. 132. There shall be charged for the registration of such abstract and the inspection thereof or for a certified copy of the same the sums set forth in Schedule B hereto annexed.

Court may order exhibition of articles &c. 133. The exhibition of the articles of partnership and the disclosure of the names of the partners whose liability is unlimited can at any time be ordered by the Supreme Court in the course of proceedings against the partnership.

Certificate to false abstract: penalty. 134. Any partner or solicitor who certifies to the correctness of an abstract which shall not truly disclose the facts required to be disclosed as the same are contained in such articles of partnership, or which shall falsely set forth any of such facts, shall be deemed guilty of an offence which shall be punishable on conviction thereof according to law by imprisonment for any term not exceeding two years.

Liability of dormant partner. 135. If the partners who are set forth in the articles as contributing to the capital, and not to be liable beyond the amounts of their contribution afterwards, take an active part in the administration of the partnership they shall be liable as ordinary partners.

Liability defined. 136. The visiting occasionally of the place of business for the purpose of inspecting the books and advising with the other partners upon business matters shall not be regarded as taking part in the administration in the sense of the preceding article, but any buying and selling or dealing with the cash, or presence in the place of business during business hours which would lead the public to believe that the partner so acting was an active partner in the concern shall make him subject to the liabilities of the firm as an ordinary partner, and the consideration of the weight to be attached to any particular facts must be left to the appreciation of the legal tribunals.

Same. 137. The same consequences will follow although the partner contributing to the capital may allege that he acted in the business of the partnership per procuration of the firm or as mandatory of the other partners.

As to true position of partner. 138. In the event of any question arising as to the true position of a partner the burden of proof will lie upon the partner who claims to be relieved from the ordinary obligations to show that he was only a contributor to the capital and not an ordinary partner.

Where partner shall be deemed an ordinary partner. 139. If any partner shall receive a portion of the profit of a partnership, and is unable to prove that he has paid the sum stipulated in the articles of partnership to be payable by him as a partner contributing to the capital, he will be taken to be an ordinary partner and liable for the debts of the partnership as such.

Restriction as to capital. 140. It shall not be lawful to divide or constitute the capital of a partner of this description by shares.

All partners may inspect accounts. 141. The partners who do not take part in the administration of the business may at any time demand an inspection of the accounts of the partnership, and it shall be the duty of the partners who administer to keep the books of the partnership with correctness and up to date.

Effect of refusal. 142. If accounts should not be delivered or shown on demand the partner may apply to the Court for an account, with or without praying for a dissolution of the partnership, and under such an application the Court may not only order an account but decree a dissolution.

Penalty on partner exhibiting false accounts. 143. If the partners who administer the affairs of the partnership or any of them knowingly give or exhibit to the partner or partners whose liability is limited a false account representing the administration as having resulted in profit whereas there had in reality been a loss, he or they shall be held to have committed a fraud upon such partners which shall be an offence punishable on conviction according to law by imprisonment for any term not exceeding two years.

Liability of partner accepting dividend when no profit was made. 144. If any partner whose liability is limited shall knowingly accept of any sum purporting to be a dividend upon the amount of capital contributed by him or in name of profit made by the partnership when no such profit was made, he shall be held liable for the debts of the partnership as an ordinary partner.

What business may be conducted in partnership. 145. Any business which may be conducted under an ordinary partnership may be conducted under a partnership having partners whose liability is limited as hereinbefore defined, including the holding of real property and the working of plantations.

Where partner contributing capital is a creditor. 146. The partner contributing to the capital solely shall not rank as a creditor on the bankrupt estate of the partnership until all other creditors are satisfied and paid.

V. Joint stock companies with limited liability.

Joint stock companies. 147. In addition to the partnerships treated of in the preceding sections another class of associations are known to the law by which large amounts of capital are brought together to promote a common undertaking, and where the security of creditors depends upon the capital thus amassed rather than upon the responsibility of the individual partners. These are known by the name of Joint Stock Companies Limited.

Number required to form company. 148. Seven persons at least are required to constitute such a company, but while there is this minimum of persons the maximum is only limited by the number of holders of the shares.

Division of capital. 149. The capital of such companies must be divided into shares, and the partners or as they are more usually termed the members or shareholders are the persons who have applied for such shares and to whom such shares are allotted, or their representatives or assigns to whom the shares may be transferred or transmitted.

Liability of shareholders. 150. The liability of the members shall be limited to the amount payable on the shares allotted to them, and no member can receive less than one share. If the company is wound up at the instance of creditors before the whole amount of the shares have been paid the holder of the shares is liable for the amount unpaid.

Name of company. 151. The name of the company may be descriptive of the business in which it proposes to engage such as "The Land Loan Company Limited," but the name may also be that of a person or persons like that of an

ordinary partnership such as "John Smith & Company Limited," provided always that the word "Limited" is added to and forms part of the designation.

Liability if the word "Limited" is omitted. 152. If the word "Limited" be not added to and form part of the name inscribed on the place of business of the company and its announcements and business documents, the members will be liable for the obligations of the company as ordinary partners.

Minimum limit of shares. 153. As it is not advisable that shares should be of trifling amounts, it is enacted that they shall not represent a less sum than ten pounds each.

Responsibility of promoters. 154. The promoters or founders are those with whom the idea of forming the joint stock company for the specific object originates and those associated with them for the purpose of obtaining the consent of the first directors to act as such, and obtaining the means for floating the company and getting the capital subscribed, and who in consequence of thus acting stand in a fiduciary position towards the company.

Promoters may make conditional contracts. 155. It shall be lawful for the promoters or founders to make a contract with any person or persons conditional upon the formation of the company, that is to say—the contract shall be valid and binding between the company and the persons with whom the promoters or founders have contracted in the event of the contract being accepted and adopted by the company in the manner hereinafter set forth, and the contract shall not be valid or binding upon the promoters, or upon the company should the company not be formed and the requisite amount of capital subscribed, or the contract not be accepted and adopted by the company.

And agreements inter se. 156. It shall also be lawful for the promoters or founders to make agreements amongst themselves setting forth the part which each respectively undertakes in the formation of the company and the sums which they engage respectively to advance to promote its formation and the rate of remuneration which they stipulate for the promoting and formation to be divided amongst them.

And for professional work. 157. It shall further be lawful for the promoters or founders to make an agreement with a solicitor and for a solicitor to enter into such an agreement for the performance of the professional work required before the formation of the company on condition of being paid his bill of costs only upon the formation of the company, and to have no claim against the promoters or founders for the costs should the company not be formed. But in all such cases the bill of costs shall be taxed by the taxing officer of the Supreme Court.

Promoters' subscription. 158. The promoters or founders shall subscribe for at least one-twentieth part of the capital of the company.

Memorandum of projected company to be registered with Registrar-General. 159. Before any announcement shall be publicly made of the projected company or any invitation to the public to subscribe for the capital, the promoters or founders shall register at the office of the Registrar-General in a book to be kept by him for the purpose a memorandum to be called "Memorandum of Projected Joint Stock Company" in which they shall set forth the name of the proposed company, its place of business, the objects for which it is to be established, the amount of capital and the number of shares into which the capital is to be divided and the amount of each share, and whether the liability of the directors or any one or more of them or of the manager is to be unlimited, with the names of the promoters or founders, and the number of shares which they respectively subscribe.

Form of memorandum. 160. In the said memorandum the promoters or founders shall also set forth a note of the different conditional contracts or contracts of any kind entered into by the promoters or founders the obligations of which are ultimately to be borne by the company, with an accurate statement of the amount to be so borne, the dates of the contracts and also of any separate agreements or contracts with the promoters or founders (if any) by which they are to receive benefit in consequence of entering into such contract provisional or otherwise, and also a note of the agreements entered into among the promoters or founders containing the amount to be paid to them by the company for the promotion and formation, and the date of the deeds writings or agreements. The memorandum shall be in the form set forth in Schedule C hereto annexed or as near thereto as circumstances permit.

Other documents to be deposited. 161. Along with such memorandum the contracts, agreements, and writings shall be deposited, and shall be filed by the Registrar-General as relative to the said memorandum.

False statements. Penalty. 162. The memorandum together with a declaration to the truth of what is averred therein as the same is set forth in Schedule C shall be signed by all the promoters or founders, and if it be at any time thereafter found that the statements contained in the said memorandum or any of them are false, or that all the contracts for which the company is liable or of which after commencing business it is called upon to assume the liability which the promoters have made in relation to the promoting and founding of the company are not set forth therein, or that the agreements between the promoters or founders have not truly disclosed the agreements made, or that other deeds or writings existed containing other and different stipulations which were not disclosed in the said memorandum, then the said promoters or founders shall be guilty of an offence, and on conviction thereof according to law they may be fined in any sum not exceeding one thousand pounds and imprisoned for any period not exceeding two years.

Registration fees. 163. The said memorandum shall be registered on payment of the fee set forth in Schedule E hereto, and when registered the name of the projected company shall be copyright in the said promoters or founders from the date of registration, and they may maintain action for an infringement thereof against any person or persons attempting to use the same designation before the formation of the company, and this privilege shall continue and be in force for the term of two years from the date of registration should the company not be sooner formed but no longer. The name of the company after its formation becomes the property of the company.

Certificate of registration. 164. When such memorandum has been registered as aforesaid the Registrar-General shall give a certificate of registration of memorandum to the promoters or founders, mentioning therein the names of the promoters or founders in the form contained in Schedule D hereto annexed or as near thereto as circumstances will permit, and this certificate shall be prefixed or appended to any application made to the public to subscribe for shares in the new company.

Memorandum may be inspected. 165. The memorandum, contracts, and deed or writings of agreement shall be open to the inspection of the public at the office of the Registrar-General on payment of the fees set forth in Schedule E hereto annexed, but the said documents shall be open to the inspection of any person duly accredited as representing a public journal free of charge.

Formation of company to be certified. 166. The company shall be taken to be formed for the purposes of the first meeting of members after the shares have been subscribed, and one-fifth of the capital paid into the bank account of the company, and a certificate to that effect has been obtained from the Registrar-General in the form contained in Schedule F hereto, or as near thereto as circumstances will permit.

Register of shareholders. 167. The promoters or founders shall prepare a Register of the persons to whom shares have been allotted, and shall submit the same to the Registrar-General when applying for the certificate of the formation of the company, and the office-bearers of the company after incorporation shall continue the said Register and shall add thereto the names of shareholders as they successively become members of the company.

Refusal of certificate. 168. It shall be the duty of the Registrar-General to make minute inquiry into the state of the subscriptions for the capital, and if he has reason to believe that the subscriptions are not genuine but that the names of clerks, servants, or others of the promoters or founders or those employed in the floating of the company, or mere men of straw have been entered as subscribers of capital solely for the purpose of obtaining the certificate of the Registrar-General, then he shall refuse his certificate that the company has been formed, and shall give a certificate containing his reasons for so refusing, and the formation of the company shall be suspended and the payments to account of capital shall be returnable to the subscribers. Provided always, that should the promoters or founders feel aggrieved by the decision of the Registrar-General they may apply to the Supreme Court by way of motion for a Rule calling upon the Registrar-General to show cause why the company should not obtain the certifi-

cate of formation, and the Court shall inquire into the whole circumstances and give such order as may appear just.

Certificate to be advertised. 169. When the Registrar-General has granted his certificate of the formation the promoters or founders shall publicly advertise the certificate and shall call the first general meeting of the shareholders.

Election of office-bearers. 170. At this meeting the shareholders shall in the first place proceed to the election of office-bearers, and they shall confirm the nomination of the directors selected by the promoters (one being sufficient but no specific number being required), unless the selection of any one or more shall be directly challenged by at least three of the shareholders when a ballot shall be taken and the confirmation shall be determined by the result of the vote of the shareholders present.

Liability of directors. 171. The liability of the directors, or of one or more of them, or of the manager, may be unlimited, that is they may be responsible for the debts of the company as ordinary partners, and if the company has been formed upon such a stipulation or condition it shall not be in the power of the first meeting of shareholders to alter the condition but the confirmation of such directors and the election of such manager if confirmed or elected shall be upon the like stipulation or condition.

Prior contracts and agreements to be either adopted or refused. 172. After the confirmation or election of office-bearers the meeting shall consider the contract and other writings made by the promoters or founders in relation to the formation of the company, and the deed of agreement or writings or documents made between the promoters or founders themselves, and the whole of the said contracts, deeds of agreement, writings, and documents shall be audibly read, and shall either be adopted by the meeting or the adoption shall be refused.

If adopted to be binding. 173. If adopted the contracts or other writings shall become binding upon the company, and the stipulations contained in the deed of agreement or writings or documents between the promoters or founders when the same relate to payments by the company shall be due and owing by the company.

If not adopted capital to be returned. 174. Should the meeting refuse to adopt the contracts or to sanction the stipulations of the promoters, and no modification or agreement be then and there proposed and sanctioned by the meeting, no further steps shall be taken in the formation of the company, and the portion of the capital already paid shall be returned in full to the persons to whom shares have been allotted according to the sums paid by them.

Contracts and agreements being adopted. Articles of association shall be considered. 175. If the contracts and other agreements shall be adopted the meeting shall proceed to consider the articles of association. These shall first be submitted to the Attorney-General of the Colony who shall certify them before being laid before the first meeting. There shall be paid to him for such certificate the fee mentioned in Schedule E hereto annexed. It shall be the duty of the Attorney-General to see that the articles contain all the provisions necessary for the working of the company, and for the signing of bills, cheques, and obligations, and for the protection of creditors and members, but in especial the articles shall contain provisions for a thorough and impartial audit of the books of the company before each annual general meeting of shareholders and the preparation of a balance-sheet in time to be laid before such annual general meeting, which in all limited companies must be held. The articles shall also contain a clause that on the loss of three-fourths of the capital the directors shall take steps for the winding-up of the company, and that if they fail to do so they shall be liable for future losses as unlimited partners in an ordinary partnership.

Company incorporated upon approval of articles. 176. The articles of association as approved by the meeting shall be the articles of association of the company and shall bind each member of the company his heirs, executors, administrators, and assigns as if such member had subscribed the same and affixed his seal thereto, and upon the approval and adoption of the said articles the company shall be an incorporated Joint Stock Company Limited under the registered name, carrying on business at the registered place of business, and having perpetual succession and a common seal, with power to hold land, and with the liability on the part of the members to contribute to the assets of the company in the event of its being wound up the sum unpaid on the shares held by them.

Minutes of first meeting to be registered. 177. A copy of the minutes of the first meeting certified by the chairman and secretary as correct, together with a copy (which may be printed) of the articles of association certified in like manner to be those adopted by the meeting shall be registered with the Registrar-General. The minutes of meeting shall be registered in the same book as the memorandum already provided for, and the articles of association shall be filed as relative thereto. The registration of the minutes of meeting shall be proof of the incorporation of the company, and a certificate under the hand of the Registrar-General to that effect shall be taken to be sufficient proof of such incorporation in all courts of law. The Registrar-General shall charge for such registration and certificate the fees mentioned in Schedule E hereto.

Conduct of business. 178. After the incorporation of the company its business shall be conducted by the directors and office-bearers.

Responsibility of directors &c. 179. The responsibility of the directors and office-bearers to the shareholders shall be determined by the general principles applicable to the mandate which they hold from the members of the company. Where fraud shall be established against the directors or office-bearers, or any of them, either in the declaration of profits which have not been earned, or in dealing with the capital or moneys or securities of the company, those guilty of the fraud shall be held liable for the debts of the company as unlimited partners in an ordinary partnership, and may be sued therefor without the assets of the company being realised.

Shares transferable. 180. The shares of an incorporated joint stock company, whether the whole amount has been paid up thereon or not, shall be transferable by full or special indorsation, provided that a stamp be affixed thereto representing the stamp duty exigible under any law in force for the time in regard to such transfer, but the property in the said shares shall not pass until the transfer has been registered in the office of the company in the register of shareholders or in any register of transfers and transmissions to be kept for the purpose. The shares of a deceased member shall pass to his personal representatives, and the executor or administrator shall be entitled to exercise all the powers of a member in regard thereto so soon as the probate or letters of administration have been registered in such register of shareholder or of transfer¹⁾ and transmissions.

Place of business to be registered. 181. The registered place of business at which the business of the company is conducted may be changed from time to time, but all such changes must be notified to the Registrar-General to be registered by him in the book already provided for, and for every such registration of the place of business the Registrar-General shall charge the fee mentioned in Schedule E hereto. The name of the company shall be conspicuously affixed to such place of business and upon all letters, bills, deeds, and all documents whatsoever connected with the business of the company.

List of shareholders to be made annually. 182. A corrected list of shareholders containing all the changes by transfer or transmission shall be made up by the office-bearers of the company to be laid before the annual general meeting of the shareholders, and such list shall also set forth the names of the officiating directors and office-bearers, and such list shall at all times be open to the inspection of shareholders or their authorised attorneys or agents at the place of business of the company until a new list has been made up. The register of transfers or transmissions and the register of shareholders shall also be open to inspection when demanded by any shareholder or his authorised attorney or agent.

As to companies incorporated in England or Australian colonies. 183 (as amended by No. VIII. of 1905). Joint Stock Companies Limited or public companies lawfully incorporated by the law of England or of any of the British Australian colonies may carry on business in Fiji by registering a memorandum of the name of the company, with the capital and the amount and number of the shares, the names of the directors and office-bearers, the place of business in England or the colonies, and the place or places in which they propose to carry on business in this Colony, with the name of the local directors or office-bearers, and depositing to be filed as relative thereto a copy of the articles of association or charter of the said companies, and when so registered the company may sue and be sued in

¹⁾ *Sic.* Obviously "transfers."

Form of memorandum. Fees. 184. The said memorandum shall as nearly as the circumstances permit be in the form of Schedule G hereto annexed. There shall be paid for the registration of the said memorandum the fee fixed in Schedule E hereto annexed. A certificate by the Registrar-General that the memorandum has been registered shall be sufficient proof in all Courts of law that the company is entitled to the privileges set forth in the preceding section.

Schedules.

day
(Signature.)

	£	s.	d.
Recording abstract of partnership	5	0	0
Inspection of register	1	0	0
Certified copy of an abstract	2	10	0

To which there shall be appended the following certificate:—

We the parties named and designated in the before-written memorandum as promoters and founders of the proposed [*here insert name of company*] most solemnly and sincerely declare that we are the only promoters and founders thereof and that the before-written memorandum is true in every respect, and that we have truly disclosed all the contracts and agreements and obligations made and undertaken by us for and on behalf of the said company, or in relation to the formation thereof, or amongst ourselves, and that we have not concealed any material fact which it would be for the interest of the members of the company to know, or which would affect the welfare and success of the company in any manner or way.

In witness whereof we have hereunto set our hands this

day of

[*Here follow signatures of all the promoters or founders.*]

Schedule D. Form of certificate by Registrar-General (Sect. 164).

I Registrar-General of the Colony of Fiji, hereby certify that a memorandum of a projected Joint Stock Company to be called the [*here insert name*] and of which the capital is to be £ divided into shares of £ each has been duly registered; that the promoters or founders of the said company are [*here insert names*] and that the contracts, agreements, and other documents connected with the promotion of said company have been filed in my office and are open to inspection on payment of the fees fixed by law.

Registrar-General.

Schedule E. Table of fees (Sects. 163, 165, 175, 177, 181).

	£	s.	d.
Registration of memorandum of projected joint stock company	5	0	0
Inspection of memorandum and accompanying contracts and documents	0	5	0
Certified copy of memorandum	1	0	0
Certified copy of contracts or documents per folio	0	1	0
Registration of minutes of first meeting and filing articles of association	10	0	0
Certificate that company incorporated	1	0	0
Registration of company formed out of Fiji	20	0	0
Certificate of such registration	1	0	0
Certificate of Attorney-General to articles of association	10	10	0
Registration of change in place of business	0	10	0

Schedule F. Form of certificate (Sect. 166).

I Registrar-General of Fiji hereby certify that the capital of the [*here insert name*] has been subscribed and one-fifth thereof paid into the bank of [*here insert name of bank*] and that the company is thus formed for the purpose of holding the first general meeting of members.

Registrar-General.

Schedule G. For the registration of foreign companies (Sect. 184).

Memorandum for registration of public company incorporated out of the Colony of Fiji.

The name of the company is [*here insert name*]

The capital of the said company is £ divided into shares of £ each.

Its head office is situated at of The names of the directors and office-bearers are [*here insert names*]

The said company proposes to carry on business at in the Colony of Fiji.

Its local manager in Fiji is and we have deposited to be filed as relative hereto the articles of association of the said company.

In witness whereof we have hereunto set our hands this

day of

[*Here follow signatures of local office-bearers.*]

b) Ordinance No. VIII of 1905.¹⁾ An Ordinance to amend "The Partnership Consolidation and Limited Liability Ordinance, 1878" (19th October 1905).

Short title. 1. This Ordinance may be cited for all purposes as "*The Partnership Amendment Ordinance 1905.*"

Amendment of section 183 of III of 1878. 2. (This section amends No. III of 1878, § 183, and is there incorporated.)

¹⁾ Originally No. XVII of 1905.

c) Ordinance No. XI of 1909. An Ordinance to amend the Partnership Consolidation and Limited Liability Ordinance, 1878, as to Registering the Names of Joint Stock Companies (10th June, 1909).

Short title. 1. This Ordinance may be cited for all purposes as the *Partnership Consolidation and Limited Liability (Amendment) Ordinance, 1909.*

Words "empire" and "imperial" not to be used in name of company without leave. 2. No company within the purview of the *Partnership Consolidation and Limited Liability Ordinance, 1878*, shall be registered under a name or title including the word "empire" or the word "imperial," or any other word or expression calculated to mislead by conveying the impression of government support or connection, unless the consent of the Governor in Council to the registration of the name or title has first been had and obtained.

Registrar-General may refuse to register company if name objectionable; on demand Registrar-General to certify refusal; appeal from decision of Registrar-General. 3. 1. It shall be lawful for the Registrar-General to refuse to register any company within the purview of the said Ordinance, if in his opinion the name, or the proposed name, of the company is the same as the name of a company already registered, or one which may be readily mistaken therefor, or one which is so similar thereto as to be calculated to deceive; 2. When the Registrar-General, in pursuance of the powers hereby given, shall refuse to register a company he shall, on demand made by or on behalf of the person or persons desiring to register the company, give a certificate containing his reasons for so refusing; 3. Any person or persons so desiring to register the company who may feel aggrieved by the decision of the Registrar-General, may apply to the Supreme Court, by way of motion, for a rule calling upon the Registrar-General to show cause why the company should not be registered, whereupon the Court shall inquire into the circumstances, and make such order as may appear to be just.

Application to company incorporated in England and colonies. 4. This Ordinance shall apply as well to joint stock companies limited and companies incorporated by the law of England, or of any British colony, as to companies formed or incorporated under the laws of this Colony.

d) Ordinance No. XXII of 1910. An Ordinance to declare and amend the law of Partnership (12th November, 1910).

[This Ordinance repeals §§ 2—146, 153 of the *Partnership Consolidation and Limited Liability Ordinance, 1878*, reprinted supra. The Ordinance of 1910 is identical in all material respects with the *Imperial Partnership Act, 1890* (53 & 54 Vict. c. 39).]

Bank Holidays Ordinance, 1885.

Ordinance No. II of 1885.¹⁾ An Ordinance to make provision for Bank Holidays (16th October, 1885).

Short title. 1. This Ordinance may be cited for all purposes as "*The Bank Holidays Ordinance, 1885.*"

Bank holidays to be observed. Proviso. As to bills due on bank holidays. 2. After the passing of this Ordinance the several days in the Schedule to this Ordinance mentioned (which days are in this Ordinance hereinafter referred to as bank holidays) shall be kept as close holidays in all banks in the Colony. Provided that, when any of the days mentioned in the said Schedule falls upon a Sunday the next following Monday shall be a bank holiday, and whenever the twenty-sixth day of December falls upon a Monday the day following shall be a bank holiday. All bills of exchange and promissory-notes which are due and payable on any such bank holidays, save and except as is hereinafter provided, shall be payable, and in case of non-payment may be noted and protested, on the next following day and not on such bank holiday, and any such noting or protest shall be as valid

¹⁾ Originally No. XIX of 1885.

as if made on the day on which the bill of exchange or promissory-note was made due and payable; and for all the purposes of this Ordinance the day next following a bank holiday shall mean the next following day on which a bill of exchange or promissory-note may be lawfully noted or protested.

As to bills due on Christmas Day and Good Friday. Proviso. 3. When any bill of exchange or promissory-note becomes due and payable upon Sunday, Christmas Day, or Good Friday, such bill of exchange or promissory-note shall be due and payable upon the day next preceding. Provided that, when the last day of grace is a bank holiday other than Christmas Day or Good Friday, or when the last day of grace is a Sunday, and the second day of grace is a bank holiday, such bill of exchange or promissory-note shall be due and payable upon the next succeeding business day.

Provision as to notices of dishonour and presentation for honour. 4. When the day on which any notice of dishonour of an unpaid bill of exchange or promissory-note should be given, or when the day on which a bill of exchange or promissory-note should be presented or received for acceptance or payment, or accepted or forwarded to any referee or referees, is a bank holiday, such notice of dishonour shall be given, and such bill of exchange or promissory-note shall be presented or forwarded on the day next following such bank holiday.

As to payments on bank holidays. 5. No person shall be compelled to make any payment or do any act upon such bank holidays which he would not be compelled to do or make upon Christmas Day or Good Friday, and the obligation to make such payment and to do such act shall apply to the day following such bank holiday; and the making of such payment and doing such act on such following day shall be equivalent to payment of the money or performance of the act on the holiday. Provided notwithstanding that, any absconding debtor shall not be exempt from arrest on a bank holiday.

Appointment of special bank holidays. 6. It shall be lawful for the Governor in Council from time to time by proclamation in the *Gazette* to appoint a special day to be observed as a day of public rejoicing or mourning either throughout the Colony, or in any part thereof, or in any town or district therein, and any day so appointed shall be kept as a close holiday in all banks within the locality mentioned in such proclamation, and shall as regards bills of exchange and promissory-notes payable as aforesaid be deemed to be a bank holiday for all the purposes of this Ordinance.

Day appointed for bank holiday may be vetoed by proclamation. 7. When it is made to appear to the Governor in Council that in any special case in any year it is expedient that a day by this Ordinance appointed for a bank holiday should not be a bank holiday, the Governor may declare by proclamation in the *Gazette* published not less than one month before the day appointed for such holiday that such day shall not in such year be a bank holiday, and may by such proclamation appoint such other day as to the Governor in Council may seem fit to be a bank holiday instead of the day appointed by this Ordinance, and thereupon the day so appointed shall in such year be substituted for the day appointed by this Ordinance.

The Schedule.

The first day of January. — Good Friday. — The day after Good Friday. — Easter Monday. — The Anniversary of the Birthday of the Queen¹). — The first Monday in August. — The first day of September. — The Anniversary of the Birthday of the Prince of Wales. — Christmas Day. — The twenty-sixth day of December.

Bankruptcy Ordinance, 1889.

Ordinance No. VI of 1889.²) An Ordinance to amend the law relating to Bankruptcy (1st January, 1890).

Part I. Preliminary.

Short title. (Bankruptcy Act, 1883, 46 and 47 Viet. c. 52, § 1.) 1. This Ordinance may be cited for all purposes as "*The Bankruptcy Ordinance, 1889.*"

¹) "The Queen" includes Her Majesty's heirs and successors. — The Interpretation Ordinance 1875, § 2. — ²) Originally No. XVI of 1889.

Interpretation. (Bankruptcy Act, 1883, § 168 [1].) 2. In this Ordinance unless the context otherwise requires — “The Court” means the Supreme Court, and shall include the District Registrar for Levuka exercising any jurisdiction in Bankruptcy which may be delegated to him under section eleven of “The Levuka Court Ordinance, 1883;” “Gazetted” means published in the *Fiji Royal Gazette*; “Ordinary resolution” means a resolution decided by a majority in value of the creditors present personally or by proxy at a meeting of creditors and voting on the resolution; “Special resolution” means a resolution decided by a majority in number and three-fourths in value of the creditors present personally or by proxy at a meeting of creditors and voting on the resolution; “Available act of bankruptcy” means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made; “Provable debt” includes any debt or liability provable in bankruptcy under this Ordinance; “Property” includes every description of property, real or personal, corporeal or incorporeal, and whether situate in Fiji or elsewhere; “Secured creditor” means a person holding a mortgage, charge, or lien on the property of the debtor or, any part thereof as a security for a debt due to him from the debtor.

Part II. From act of bankruptcy to discharge.

Acts of bankruptcy. (Bankruptcy Act, 1883, § 4.) 3. 1. A debtor commits an act of bankruptcy in each of the following cases: a) If in Fiji or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally; b) If in Fiji or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof; c) If in Fiji or elsewhere he makes any conveyance or transfer of his property, or any part thereof, or creates any charge thereon, which would be void as a fraudulent preference if he were adjudged bankrupt; d) If with intent to defeat or delay his creditors he does any of the following things, namely—departs out of Fiji, or being out of Fiji remains out of Fiji, or departs from his dwelling-house or otherwise absents himself, or begins to keep house, or removes his property or any part thereof beyond the jurisdiction of the Court; e) If execution issued against him in any civil proceeding has been levied by seizure and sale of his goods under process of the Court; f) If he files in the Court a declaration of his inability to pay his debts in the Form No. 2 of Schedule B, or presents a bankruptcy petition in Form No. 3 of Schedule B against himself; g) If a creditor has obtained a final judgment against him for any amount and, execution thereon not having been stayed, has served on him in Fiji, or by leave of the Court elsewhere, a bankruptcy notice under this Ordinance requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not within the time allowed by the Civil Procedure Rules for appearance to a writ of summons either comply with the requirements of the notice or satisfy the Court that he has a counter-claim, set-off, or cross-demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained; h) If the debtor gives notice to any of his creditors that he has suspended or that he is about to suspend payment of his debts. 2. A bankruptcy notice under this Ordinance shall be in the Form No. 4 of Schedule B hereto, and shall be issued by the Registrar upon the filing of a request in the Form No. 5 of the Schedule by a judgment creditor for fifty pounds or more.

Receiving order.

Receiving order. (Bankruptcy Act, 1883, § 5.) 4. Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the Court may on a bankruptcy petition being presented either by a creditor or by the debtor make an order in Form No. 9 of Schedule B in this Ordinance called a receiving order for the protection of the estate. The Governor may appoint official receivers for the purpose of such orders, and may from time to time and as often as he may deem necessary cancel any appointment or appointments so made and others make in their stead.

5. = Bankruptcy Act, 1883 (46 and 47 Vict. c. 52), § 6, except that in l. d. “Fiji” is substituted for “England.”

6. = Bankruptcy Act, 1883, § 7, except that in 1. the words "in the same manner as a writ of summons" are substituted for the words "in the prescribed manner." and in 2. "petitions" for "petition."

7. = Bankruptcy Act, 1883, § 8.

Effect of receiving order. (Bankruptcy Act, 1883, § 9.) 8. 1. On the making of a receiving order an Official Receiver shall be appointed to act with respect to the property of the debtor, and thereafter, except as directed by this Ordinance, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence or continue any action or other legal proceedings, or take out or proceed with any execution against the property or person of the debtor, unless with the leave of the Court and on such terms as the Court may impose. 2. = Bankruptcy Act, 1883, § 9, 2.

Stay of proceedings after petition. (Bankruptcy Act, 1883, § 10 [2], 109.) 9. 1. = Bankruptcy Act, 1883, § 10, 1, except "an official receiver" is substituted for "the official receiver." 2. At any time after the presentation of a bankruptcy petition the Court may stay any action, execution, or other legal process against the property or person of the debtor, or allow it to continue on such terms as it may think fit.

Appointment of manager or interim receiver. (Bankruptcy Act, 1883, § 12 [1].) 10. In cases where it is desirable that the debtor's business be temporarily carried on, and it is inconvenient for the Official Receiver to carry it on, the Court may appoint a special manager for the purpose to act under the direction of the Official Receiver until the appointment of the trustee. The Court may also if necessary appoint an interim receiver for the protection of the estate to act under the direction of the Official Receiver. The special manager or interim receiver shall receive such remuneration and give such security as the Court may order.

Advertisement of receiving order. (Bankruptcy Act, 1883, § 13.) 11. Notice of every receiving order, stating the name, address, and description of the debtor, the Official Receiver appointed, the date of the order, and the date of the petition shall be gazetted and advertised in a local newspaper.

Duties of Official Receiver. (Bankruptcy Act, 1883, § 70.) 12. 1. As regards the estate of a debtor it shall be the duty of the Official Receiver: a) Pending the appointment of a trustee, where a special manager is not appointed to the debtor's estate, to act as manager thereof; b) To raise money with the sanction of the Court for the purpose of the estate in any case where in the interests of creditors it appears necessary to do so; c) If the Court shall so order, to take possession of all the books, documents, and papers of the debtor, and of all or any part of the property of the debtor; d) To summon and preside at the first meeting of creditors; e) To issue forms of proxy for use at the meetings of creditors; f) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs; g) To advertise the receiving order, the date of the creditors' first meeting, and of the debtor's public examination, and such other matters as it may be necessary to advertise; h) To act as trustee during any vacancy in the office of trustee; i) For the purpose of his duties as interim receiver or manager the Official Receiver shall have the same powers as if he were a receiver and manager appointed by the Court, but shall as far as practicable consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not unless the Court otherwise order incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods; Provided that when the debtor cannot himself prepare a proper statement of affairs the Official Receiver may, with the approval of the Court and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs. 2. The Official Receiver shall on the appointment of the trustee account to the Court for all his dealings with the estate, and shall be entitled to be paid out of the estate such fee as the Court may order or as may be prescribed by rule of Court.

Proceedings consequent on order.

Meetings of creditors. (Bankruptcy Act, 1883, § 15.) 13. 1. As soon as may be after the making of a receiving order against a debtor the first general meeting

of his creditors shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement can be entertained, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with his property. 2. With respect to the summoning and proceedings at the first and other meetings of creditors the rules in Schedule A shall be observed.

Debtor's statement. (Bankruptcy Act, 1883, § 16.) 14. 1. Where a receiving order is made the debtor shall make out and submit to the Official Receiver a statement of and in relation to his affairs in the Form No. 11 of Schedule B verified by affidavit and showing particulars of his assets, debts, and liabilities, the names, residences, and occupations of his creditors, whether in Fiji or elsewhere, the securities held by them respectively, the dates when the securities were respectively given, and the debtor's personal expenses, and (if any) business expenses for the last preceding three years. 2. The statement shall be made and deposited with the Official Receiver within seven days of the making of the receiving order, unless the time be extended by the Court. 3. = Bankruptcy Act, 1883, § 16, 4. 4. If the debtor fails without reasonable excuse to comply with the requirements of this section the Court may on the application of the Official Receiver or of any creditor adjudge him bankrupt forthwith.

Public examination of debtor.

Public examination of debtor. (Bankruptcy Act, 1883, § 17.) 15. 1—2. = Bankruptcy Act, 1883, § 17, 1—2. 3. The Official Receiver, or the trustee if appointed, shall take part in the examination of the debtor, and for the purpose thereof may with the consent of the Court employ a solicitor with or without counsel. 4. The debtor shall be examined on oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure. 5. Such notes of the examination as the Court thinks proper shall be taken down in writing and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him. Such notes shall be open to the inspection of any creditor at all reasonable times. 6. = Bankruptcy Act, 1883, § 17, 9. 7. The examination may be held by a commissioner of the Court, if the Court shall so order, and in such case the commissioner appointed shall have all the powers of the Court with respect to the examination.

Composition or scheme of arrangement.

Composition or arrangement. (Bankruptcy Act, 1883, § 18.) 16. 1. = Bankruptcy Act, 1883, § 18, 1. 2. The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed (by a majority in number representing three-fourths in value of all the creditors who have proved) at a subsequent meeting of the creditors, and is approved by the Court. 3. The subsequent meeting shall be summoned by the Official Receiver by not less than fourteen days' notice, and shall not be held until after the public examination of the debtor is concluded. The notice shall state generally the terms of the proposal, and shall be given by posting a letter in the Form No. 17 of Schedule B to each creditor who has proved, and by advertising the subsequent meeting in the *Gazette* and local newspaper. 4. The debtor or the Official Receiver may after the composition or scheme is accepted by the creditors apply to the Court to approve it. 5. If the Court is of opinion that the terms of the composition or scheme are not reasonable or are not calculated to benefit the general body of creditors or if the Court is dissatisfied with the conduct of the debtor, the Court may in its discretion refuse to approve the composition or scheme. 6. If the Court approves of the composition or scheme the terms thereof shall be embodied in an order of the Court in the Form No. 14 of Schedule B, and a composition or scheme accepted and approved as aforesaid shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy. A certificate of the Official Receiver that a composition or scheme has been duly accepted and approved shall in the absence of fraud be conclusive as to its validity. 7. = Bankruptcy Act, 1883, § 18, 10. 8. = Bankruptcy Act, 1883, § 18, 11, except that the Ordinance omits the words "on satisfactory evi-

dence," and the whole of the last sentence, beginning with the words "where a debtor is adjudged." 9. If under or in pursuance of a composition or scheme a trustee is appointed by the creditors to administer the debtor's property or manage his business Part IV. of this Ordinance shall apply to the trustee and to the composition or scheme as if the trustee were a trustee in a bankruptcy and as if the terms "bankruptcy" "bankrupt" and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and an order approving the composition or scheme. 10.—11. = Bankruptcy Act, 1883, § 18, 13.—14, except "Ordinance" is substituted for "Act."

Adjudication of bankruptcy.

17. = Bankruptcy Act, 1883, § 20, except that in 1. the Ordinance omits the word "ordinary" before the word "resolution," and the words "in pursuance of this Act" after the words "accepted or approved;" and in 2. omits the words "in the prescribed manner" after the words "local paper," substitutes the words "name of the trustee" for the words "Court by which the adjudication is made," the word "newspaper" for the word "paper," and "Ordinance" for "Act."

Trustee. (Bankruptcy Act, 1883, § 21.) 18. 1. At any time prior to adjudication the creditors may by ordinary resolution nominate some fit person to be trustee in the bankruptcy, and upon making the adjudication the Court shall appoint the creditors' nominee, or if dissatisfied with the nomination, some other person to be trustee. 2. A trustee shall give such security as the Court may direct.

Committee of inspection. (Bankruptcy Act, 1883, § 22.) 19. 1. At the first or any subsequent meeting the creditors may by ordinary resolution appoint from among the creditors qualified to vote or the holders of general proxies or general powers of attorney a committee of inspection consisting of not less than three nor more than five persons for the purpose of superintending the administration of the bankrupt's property by the trustee. 2. The committee may act by a majority of members present at a meeting, but shall not act unless a majority of the committee be present thereat. The committee shall meet at least once in every month, and the trustee or any member of committee may call a meeting of the committee whenever he thinks necessary. 3. If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant. 4. Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the creditors. 5. On a vacancy occurring in the office of a member of the committee the trustee shall summon a meeting of creditors for the purpose of filling the vacancy, but the continuing members may act notwithstanding the vacancy. 6. If there be no committee of inspection any act or thing, or any direction or permission by this Ordinance authorised or required to be done or given by the committee may be done or given by the Court on the application of the trustee.

Power to accept composition or scheme after adjudication and authorising adjudication in certain cases. (Bankruptcy Act, 1883, § 23.) 20. 1. Where a debtor is adjudged bankrupt the creditors may if they think fit at any time after the adjudication by special resolution resolve to entertain a proposal for a composition or scheme of arrangement under this Ordinance, and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication. 2. When a composition or scheme is approved by the Court after adjudication, or if the Court is satisfied by fresh evidence or otherwise that the debtor ought not to have been adjudged bankrupt, or when the debts of the bankrupt are all paid in full with interest, the Court may annul the adjudication but such annulment shall not invalidate or affect acts theretofore done by the Official Receiver, trustee or manager, or any person acting under their authority or under the authority of the Court.

Control over person and property of debtor.

21. = Bankruptcy Act, 1883, § 24, except that in 2. the concluding statement of the English Act, beginning with the words "by any special order or orders" is omitted, and "time" is substituted for "times."

22. 1.—2. = Bankruptcy Act, 1883, § 25, 1.—2., except as follows: The words “addressed to any constable or prescribed officer of the Court” contained in 1. of the English Act are omitted; the whole of the proviso following 1. d), beginning with the words “Provided that no arrest” is omitted. The words “served under this Ordinance” are substituted for “issued under this Act.” **3.** Warrants issued under the authority of this section may be in the Forms Nos. 23 and 24 of Schedule B respectively.

23. = Bankruptcy Act, 1883, § 26, except that the words “Colonial Postmaster” are substituted for the words “Postmaster-General,” and that the Ordinance adds at the end of the § the sentence: “The order may be in the Form No. 27 of Schedule B.”

Discovery of property. (Bankruptcy Act, 1883, § 27.) 24. 1. The Court may at any time after a receiving order has been made against a debtor summon before it the debtor, or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings, or property. **2.** If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document having no lawful impediment made known to the Court at the time of its sittings and allowed by it, the Court may by warrant cause him to be apprehended and brought up for examination. **3.** The Court, by itself or by a commissioner appointed for the purpose, may examine on oath either by word of mouth or by written interrogatories any person so brought before it concerning the debtor, his dealings, or property. **4.** If any person on examination admits that he is indebted to the debtor the Court may on the application of the Official Receiver or trustee, by order in Form 26 of Schedule B, order him to pay to the Receiver or trustee at such time and in such manner as to the Court seems expedient the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not as the Court thinks fit, with or without costs of the examination. **5.** If any person on examination admits that he has in his possession any property belonging to the debtor the Court may on application of the Official Receiver or trustee order him to deliver to the Official Receiver or trustee such property or any part thereof at such time and in such manner and on such terms as to the Court may seem just. **6.** The Court may if it think fit order that any person who if in Fiji would be liable to be brought before it under this section shall be examined by a commissioner appointed for the purpose in any place out of Fiji. **7.** In the case of the death of the debtor or his wife, or of a witness whose evidence has been duly taken under this Ordinance, the deposition of the person so deceased, purporting to be sealed with the seal of the Court or a copy thereof purporting to be so sealed, shall in all legal proceedings be admitted as evidence of the matters therein deposed to, saving all just exceptions.

Discharge of bankrupt.

Discharge. (Bankruptcy Act, 1883, § 28.) 25. 1. = Bankruptcy Act, 1883, § 28, 1. **2.** On the hearing of the application the Court shall take into consideration the report of the Official Receiver or trustee, as the case may be, as to the bankrupt's conduct and affairs, and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt or with respect to his after-acquired property. Provided that, the Court shall refuse the discharge in all cases where the bankrupt has committed any misdemeanour under this Ordinance, and shall on proof of any of the facts hereinafter mentioned either refuse the order or suspend the operation of the order for a specified time or grant an order of discharge subject to any such conditions as aforesaid. **3.** = Bankruptcy Act, 1883, § 28, 3, except that in a) of the Ordinance the word “the” is omitted between the words “within” and “three,” and in f) “next” is inserted after “three months.” **4.** The order to be made on the application may be in the Form No. 13 of Schedule B. **5.** Notice of the appointment by the Court of the day for hearing

the application for discharge shall be gazetted and published in a local newspaper fourteen days at least before the day so appointed. The Court may hear the trustee and may also hear any creditor. At the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit. 6. The Court may, as one of the conditions referred to in this section, allow judgment to be entered against the bankrupt by the trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, but in such case execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available for payment of his debts. 7. A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of Court.

Effect of order of discharge. (Bankruptcy Act, 1883, § 30.) 26. 1. An order of discharge shall not release the bankrupt from any debt on a recognisance or bail-bond to the Crown or to a public officer, nor from any debt with which the bankrupt may be chargeable at the suit of any public officer on behalf of the Crown, and he shall not be discharged from such excepted debts unless the Receiver-General certify in writing his consent to his being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party. 2.—3. = Bankruptcy Act, 1883, § 30, 2., 4.

Part III. Administration of property.

Proof of debts. (Bankruptcy Act, 1883, Sched. II.) 27. 1. A debt may be proved immediately after the making of a receiving order by delivering or sending through the post to the Official Receiver or to the trustee an affidavit (which may be in the Form No. 15 of Schedule B) verifying the debt made by the creditor or by some person on his behalf having knowledge of the necessary facts. 2. The affidavit shall state whether the creditor is or is not a secured creditor. 3. If a secured creditor realises his security he may prove for the balance due to him after deducting the net amount realised. 4. If a secured creditor surrenders his security for the benefit of the creditors he may prove for his whole debt. 5. If a secured creditor neither realises nor surrenders his security he may in his proof set a value on it and prove for the balance, but when it is so valued the trustee may at any time before it is realised redeem it for the benefit of the estate on payment of the amount of the valuation, or the Court on the application of the trustee may order the realisation of the security by sale by public auction. By leave of the Court a valuation as above provided for may be amended on proof that it was made *bonâ fide* on a mistaken estimate, or that the security has increased or diminished in value since the prior valuation. 6. The Agent-General of Immigration or the Native Commissioner, as the case may be, shall, in respect of any debt due to him in his official capacity which by the provisions of any Ordinance in force for the time being is made a charge upon the land of the debtor, be deemed a secured creditor within the meaning of this section with the priority and precedence over other encumbrances on the same land as may be provided by any such Ordinance. Provided that, if the Agent-General of Immigration or Native Commissioner, as the case may be, shall not have previously obtained a judgment or order for payment in respect of the debt he shall prove in the bankruptcy for the same before he realises on his security. When any such debt is by the provisions of any such Ordinance also made a charge upon the personal estate or property of the debtor the Agent-General or Commissioner aforesaid shall have a right of proof in respect of the balance of the debt which he is unable to realise from the security of the land, but shall not be entitled to otherwise enforce his charge over the personal estate or property as against the trustee or Official Receiver. 7. Subject to the power of the Court to extend the time, the trustee or Official Receiver shall within fourteen days after receiving a proof either admit it or reject it wholly or in part or require further evidence in support of it, and shall notify his decision to the creditors at the next general meeting. An appeal

to the Court from the admission or rejection of a proof shall not lie after the expiration of one month from the date of the decision, unless the Court allow it for special reasons shown.

Description of debts provable. (Bankruptcy Act, 1883, § 37.) 28. 1.—3. = Bankruptcy Act, 1883, § 37, 1.—3., except that in 2. the Ordinance omits the words “under the order.” 4. The value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies or for any other reason does not bear a certain value may be estimated by the Court on reference by the trustee. The amount so estimated shall be deemed a debt provable in bankruptcy, but if the Court is of opinion that the debt or liability cannot be fairly estimated it shall not be deemed provable in bankruptcy. 5. = Bankruptcy Act, 1883, § 37, 8., except that the Ordinance substitutes the word “probability” for “possibility” before the words “of an obligation,” and the words “any contingency or contingencies” for “one contingency or on two or more contingencies.”

Set-off. (Bankruptcy Act, 1883, § 38.) 29. Where there have been mutual credits, mutual debts, or other mutual dealings, between the debtor against whom a receiving order has been made and a creditor, the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account and no more shall be claimed or paid on either side respectively. Provided that, a creditor shall have no set-off in respect of any credit given to the debtor after the creditor has had notice of an act of bankruptcy committed by the debtor and available against him for adjudication.

Preferential proofs. (Bankruptcy Act, 1883, §§ 40, 41; Preferential Payments in Bankruptcy Act, 1888, [51 & 52 Viet. c. 62], § 1.) 30. 1. In the distribution of the property of a bankrupt there shall be paid in priority to all other debts: a) All local rates due from the bankrupt at the date of the receiving order having first become due and payable within twelve months next before such date; b) The wages or salary of any clerk or servant (not including indentured immigrants or indentured native labourers) in respect of services rendered to the bankrupt during the four months next preceding the date of the receiving order and not exceeding fifty pounds; c) The wages of any labourer or workman (other than an indentured immigrant or indentured native labourer) not exceeding fifty pounds, whether payable for time- or piece-work, in respect of services rendered to the bankrupt during the four months immediately preceding the receiving order; d) Such part of any premium paid by or on behalf of any apprentice or articulated clerk under service to the bankrupt as the Court may order. 2. The foregoing debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is insufficient to meet them in which case they shall abate in equal proportions between themselves. 3. The joint estate of partners shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate. 4. Subject to the provisions of this Ordinance all debts proved in the bankruptcy shall be paid *pari passu*.

Distress for rent. (Bankruptcy Act, 1883, § 42.) 31. The landlord or other person to whom any rent is due from the bankrupt may at any time either before or after the commencement of the bankruptcy distrain upon the goods and chattels of the bankrupt for the rent due, provided that, if such distress be levied after the commencement of the bankruptcy it shall be available only for one year's rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due may prove under the bankruptcy for the surplus due for which the distress may not have been available.

Property available for the payment of debts.

Relation back of trustee's title. (Bankruptcy Act, 1883, § 43.) 32. The bankruptcy of a debtor shall be deemed to have relation back to and to commence at the time of the act of bankruptcy being committed on which the receiving order was made, or if the bankrupt is proved to have committed more acts of bankruptcy than one to have relation back to and to commence at the time of the first

of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the presentation of the bankruptcy petition.

33. = Bankruptcy Act, 1883, § 44, except that in 2. the Ordinance reads "necessary wearing apparel, furniture and bedding", instead of "necessary wearing apparel and bedding," and "tools, apparel, furniture and bedding", instead of "tools, and apparel, and bedding;" and that in ii, the words "except the right of nomination to a vacant ecclesiastical benefice, and," contained in the English Act, are omitted.

Effect of bankruptcy on antecedent transactions.

Restriction of rights of execution creditor. (Bankruptcy Act, 1883, § 45.)

34. 1. = Bankruptcy Act, 1883, § 45, 1. 2. For the purposes of this Ordinance an execution against goods is completed by seizure and sale, an attachment of a debt is completed by receipt of the debt, and an execution against land is completed by sale under an order of the Supreme Court.

35. = Bankruptcy Act, 1883, § 46, except that in 2. the Ordinance reads "presented by or against the debtor," instead of "presented against or by the debtor," and "purchases such goods" instead of "purchases the goods;" and "by the Sheriffs" is omitted.

36. = Bankruptcy Act, 1883, § 47, 1.

37. = Bankruptcy Act, 1883, § 48.

38. = Bankruptcy Act, 1883, § 49, except that in 1. of the Ordinance the word "dealing" is omitted.

Realisation of property.

39. 1.—5. = Bankruptcy Act, 1883, § 50, 1.—3., 5., 6., except that in the Ordinance in 2. the words "Supreme Court" are substituted for the words "High Court" and that in 5. the word "duly" is omitted before the word "assigned." 6. = Bankruptcy Act, 1883, § 51, except that in the Ordinance the words are "when the Court is satisfied" instead of "where the Court is satisfied," and that the word "accordingly" is substituted for the words "according to its tenor," and "warrant of court" for "warrant of the court." The Ordinance adds at the end: "Such warrant may be in the Form No. 25 of Schedule B."

Estate out of the Colony. 40. Where the bankrupt is possessed of real or personal estate out of the Colony the trustee shall require him to join in selling it for the benefit of the creditors and to sign all necessary authorities, powers, deeds, and documents for the purpose, and when and so often as the bankrupt may refuse to do so he may be punished for a contempt of Court.

Salary of Government officers. 41. When a bankrupt is an officer or clerk or otherwise employed or engaged in the Civil Service of the Government the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court on the application of the trustee, with the consent of the Attorney-General, may direct.

Vesting and transfer of property. (Bankruptcy Act, 1883, § 54.) 42. 1.—3. = Bankruptcy Act, 1883, § 54, 1.—3. 4. As soon as may be after the making of a receiving order the registrar of the Court shall give notice thereof in writing to the Registrar-General, and if the debtor is the registered owner of any land or any interest in land the Registrar-General shall thereupon enter a caveat against all dealing with any such land or interest until the appointment of the trustee, or until and subject to further order of the Court. Upon the appointment of a trustee the certificate of his appointment shall be served on the Registrar-General who shall thereupon make an entry of such appointment on the register, and the trustee shall thereupon have power to deal with all the land or interest in land vested in the bankrupt at the date of the receiving order to the same extent as the bankrupt himself might have done at the lastmentioned date. 5. If a composition or scheme of arrangement be duly accepted the Court shall either make an order withdrawing the caveat entered on the appointment of the Official Receiver or shall give such directions as may be necessary to give effect to any terms agreed upon between the debtor and his creditors with respect to his real property.

Disclaimer of unsaleable property. (Bankruptcy Act, 1883, § 55.) 43. 1.—6. = Bankruptcy Act, 1883, § 55, 1.—6., except as follows: In 1. the Ordinance adds the words "or liabilities" between the words "onerous covenants" and "of shares," and "first" is omitted before "appointment;" in 3. the Ordinance omits

the words "except in any cases which may be prescribed by general rules;" in 6. the Ordinance omits the words "or a trustee for him," and the words "whether as underlessee or as mortgagee by demise," and also omits every thing from "and on any such vesting order" to "for the purpose". 7. The Court shall give such directions to the Registrar-General as may be necessary for the due carrying out of the provisions of this section with respect to the disclaimer of real property. 8. = Bankruptcy Act, 1883, § 55, 7.

44. = Bankruptcy Act, 1883, § 56, 1.—4.

Powers exercisable with consent of committee of inspection or of the Court. (Bankruptcy Act, 1883, §§ 56, 57.) 45. The trustee may with the permission of the committee of inspection do all or any of the following things: 1. Carry on business of the bankrupt so far as may be necessary for the beneficial winding up of the same; 2. Bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt; 3. Employ a solicitor or other agent to take any proceedings or do any business sanctioned by the committee of inspection; 4. Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the committee think fit; 5. Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts; 6. Refer any dispute to arbitration and compromise all debts, claims, and liabilities upon such terms as may be agreed on. The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things but shall only be a permission to do the particular thing or things for which permission is sought.

Distribution of property.

Dividends. (Bankruptcy Act, 1883, § 58.) 46. 1. The first dividend (if any) shall be declared within four months after the conclusion of the first meeting of creditors, unless there be a sufficient reason for postponing the declaration to a later date, and subsequent dividends shall, in the absence of sufficient reasons to the contrary, be declared and distributed at intervals of not more than six months. 2. At least one month before declaring a dividend the trustee shall cause notice of his intention to do so to be gazetted and published in one local newspaper, and shall also post a notice in writing to each creditor mentioned in the bankrupt's statement who has not proved his debt. 3. When the trustee has declared a dividend he shall cause a notice to be gazetted and published in one local newspaper showing the amount of the dividend and when and how it is payable.

47. = Bankruptcy Act, 1883, § 59, 1.

48. = Bankruptcy Act, 1883, § 60, except that in the Ordinance, in the first sentence, the words are "statement" and "proof" instead of "statements" and "proofs."

Creditor proving after dividend. (Bankruptcy Act, 1883, § 61.) 49. A creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb any distribution already made by reason that he has not participated therein.

Final dividend. (Bankruptcy Act, 1883, § 62.) 50. When the trustee has realised all the property of the bankrupt, or so much thereof as can be realised without needlessly protracting the trusteeship, he shall declare a final dividend, which dividend shall be so specified in the *Gazette* and newspaper notices and in the notice to creditors. Any creditor who has not proved shall be excluded from such dividend unless he establishes his claim to the satisfaction of the Court before such dividend is declared.

51. = Bankruptcy Act, 1883, § 63.

52. 1. = Bankruptcy Act, 1883, § 64, 1., except that the Ordinance adds the words "or of the Court" after the words "committee of inspection." 2. The Court on the application of the trustee may if it thinks fit make an allowance out of the estate to the bankrupt for the support of himself and his family or in consideration of his services in assisting the trustee.

53. = Bankruptcy Act, 1883, § 65.

Part IV. Matters incidental to trustees' duties. Costs and charges.

Costs and remuneration. 54. 1. All costs of or incident to proceedings in bankruptcy shall, subject to the provisions of this Ordinance, be in the discretion of the Court. 2. Where a trustee or manager receives remuneration for his services as such no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required to be performed by himself. 3. No solicitor's bill of costs shall be allowed in the trustee's accounts unless it has been taxed by the proper officer. 4. The remuneration of any trustee, manager, or receiver, or the allowance to any bankrupt, or any part of such remuneration or allowance, may, if the Court shall so order, be forfeited for misconduct.

Banking account. (Bankruptcy Act, 1883, §§ 74, 75.) 55. 1. Every trustee in a bankruptcy receiving money as such trustee shall open an account at a bank in the name of the debtor's estate, and every such trustee shall pay to the credit of such account all sums which may from time to time be received by him as such trustee. 2. No trustee under a bankruptcy shall pay any money received by him as trustee into his private banking account or use it otherwise than in the administration of the estate on any pretence whatever. 3. Any trustee as aforesaid paying money into his private banking account or using it otherwise than in the administration of the estate or retaining it in his hands for more than a week may, without prejudice to any other liability, be dismissed from office without remuneration, and may be ordered by the Court to pay any expenses to which the creditors may be put in consequence of his dismissal.

Record and book of account to be kept. 56. 1. The trustee shall keep a record in writing in which he shall enter a minute of all proceedings had and resolutions passed at any meeting of creditors or of the committee of inspection, and a statement of all negotiations and proceedings necessary to give a correct view of the management of the bankrupt's property. He shall also keep an account to be called "The Estate Account" in the form of an ordinary debtor and creditor account in which he shall enter from day to day all his receipts and payments as trustee. 2. The trustee shall produce at every meeting of creditors and at every meeting of the committee of inspection the record and account above mentioned and also the pass-book of the estate's bank account, and such documents shall be open to the inspection of any creditor at all reasonable times.

Audit and order therein. (Bankruptcy Act, 1883, § 78.) 57. 1. Every trustee shall not less than twice in each year during his tenure of office deposit in the Registry of the Supreme Court an account of his receipts and payments verified by affidavit. 2. The Court may order the accounts to be audited by any person named by the Court or may itself examine them, and it shall be the duty of the trustee to furnish all such vouchers or information as may be necessary for such audit or examination. 3. The Court may after hearing the explanation (if any) of the trustee make such order as it thinks just for compelling the trustee to make good any loss to the estate which after such audit or examination may appear to the Court to have been occasioned by any misfeasance, neglect, or improper omission of the trustee.

Release of trustee.

Release. (Bankruptcy Act, 1883, § 82.) 58. 1. When the trustee has realised all the property of the bankrupt, or so much thereof as can in his opinion be realised without needlessly protracting the trusteeship, and has distributed a final dividend (if any), or has ceased to act by reason of a composition having been approved, or has resigned or been removed from office, he may apply to the Court for his release, and if all the requirements of the Court with respect to accounts and with respect to any order of the Court against the trustee have been fulfilled the Court shall make an order for the release accordingly. 2. = Bankruptcy Act, 1883, § 82, 3., except that the Ordinance substitutes the word "Board" for the word "Court."

Official name.

Official name. (Bankruptcy Act, 1883, § 83.) 59. The trustee may sue and be sued by the official name of "The trustee of the property of A. B. a bankrupt" and in that name may hold property of every description, make contracts, enter

into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Miscellaneous.

Removal. (Bankruptcy Act, 1883, § 86.) 60. 1. If the Court is of opinion that a trustee is guilty of misconduct or neglect, or if the trustee is insolvent, or if the Court is satisfied that the interests of the creditors require it, the Court may remove the trustee from office and appoint some other person in his place. 2. During any vacancy in the office of trustee the Official Receiver shall act as trustee.

Directions. (Bankruptcy Act, 1883, § 89.) 61. 1. The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and the directions given at any such general meeting shall, subject to the provisions of this Ordinance, be followed as far as possible notwithstanding that they conflict with the directions of the committee of inspection. 2. The trustee may apply to the Court for directions in relation to any particular matter arising under the bankruptcy.

62. = Bankruptcy Act, 1883, § 90.

Disobedience to order. 63. Where default is made by a trustee debtor or other person in obeying any order or direction made or given by the Court, the Court may make an immediate order for the committal for contempt of Court of such trustee, debtor, or other person, provided that, the power given by this section shall be deemed to be in addition to and not in substitution for any other right, remedy, or liability in respect of such default.

Part V. Procedure.

The Supreme Court. 64. The Supreme Court shall deal with bankruptcy petitions, and the rules of the Supreme Court for the time being for regulating Civil Procedure of the Supreme Court shall, so far as the same may be applicable and not inconsistent with the provisions of this Ordinance, be applied to bankruptcy proceedings.

65. = Bankruptcy Act, 1883, § 106, except that "when" is substituted for "where," and "or any of them" is omitted.

66. = Bankruptcy Act, 1883, § 108, except that "order" is substituted for "orders."

Stay of proceedings. (Bankruptcy Act, 1883, § 109.) 67. The Court may at any time for sufficient reason stay the proceedings under a bankruptcy petition either altogether or for a limited time on such terms and subject to such conditions as the Court may think just.

68. = Bankruptcy Act, 1883, § 111.

69. = Bankruptcy Act, 1883, § 113, except that "for authority" is omitted, and "in such manner as the Court may direct" is substituted for "as the court direct."

70. = Bankruptcy Act, 1883, § 114.

Rules of Court. 71. The Chief Justice may from time to time in manner provided by section twenty-seven of "The Supreme Court Ordinance 1875" make, revoke, and alter general rules for carrying into effect the objects of this Ordinance.

Part VI. Supplemental provisions. Unclaimed funds or dividends.

Bankruptcy Estates Account. Disposal of unclaimed funds and dividends. (Bankruptcy Act, 1883, § 162.) 72. 1. When a trustee appointed under this Ordinance shall have under his control any unclaimed dividend which has remained unclaimed for more than six months, or when after making a final dividend such trustee shall have in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay the same to the registrar of the Supreme Court who shall carry the same to an account to be termed "The Bankruptcy Estates Account" to be kept at a bank appointed for the purpose. The registrar's receipt for the money so paid shall be a sufficient discharge to the trustee in respect thereof. 2. A trustee as aforesaid whether he has obtained his release or not may be called upon by the

Court to account for any unclaimed funds or dividends, and any failure to comply with the requisitions of the Court in this behalf may be dealt with as a contempt of Court. 3. Any person claiming to be entitled to any moneys paid in to the Bankruptcy Estates Account may within six years of the date when the same was so paid in apply to the registrar for payment to him of the same, and the registrar if satisfied that the person claiming is entitled shall make an order for the payment to such person of the sum due. Any person dissatisfied with the decision of the registrar may appeal to the Court. 4. After any money shall have remained unclaimed in the Bankruptcy Estates Account for a period of six years the registrar shall pay the same over to the Receiver-General for the use of the Colony, and all claims thereon shall be thenceforth barred.

Winding up of companies and administration of estates according to the law of bankruptcy.

Exclusion of corporations and companies. (Bankruptcy Act, 1883, § 123.)

73. A receiving order shall not be made against a corporation or against a registered joint stock company.

Joint stock companies. 74. 1. From and after the passing of this Ordinance a joint stock company registered and first established in Fiji shall be wound up under the provisions of the English law relating to joint stock companies in England, so far as the said law may be applicable, and the rights and liabilities of parties interested shall be ascertained and decided in accordance with the said law, anything in the said Partnership Consolidation and Limited Liability Ordinance contained notwithstanding.

Administration according to the bankruptcy law. (Bankruptcy Act, 1883, § 125.)

75. 1. A creditor of a deceased debtor whose estate is shown to be insufficient for the payment of the debts owing by the deceased person may present a petition to the Court praying for the administration of the estate of the deceased person according to the bankruptcy law, and the Court if satisfied that the estate is insufficient for the payment of the debts of the deceased person shall make an order accordingly. 2. The application for administration according to the bankruptcy law shall when made in respect of the estate of a deceased person be served upon the personal representative of such deceased person, or, if there be none in the Colony, upon the Curator of Intestate and Vacant Estates. 3. Upon an order being made for the administration of such an estate according to the law of bankruptcy the Court shall appoint a trustee in whom all the real and personal estate shall vest for the purpose of distribution. 4. Subject to the provisions of this section Parts III and IV of this Ordinance shall, so far as the same are applicable, apply to the case of an administration according to the bankruptcy law in like manner as to an adjudication of bankruptcy. 5. In the case of the administration of the estate of a deceased person according to the bankruptcy law funeral and testamentary expenses shall be deemed a preferential debt. 6. Notice of the presentation of a petition under this section shall in the event of an order for administration being made thereon be deemed equivalent to notice of an act of bankruptcy, and any transfer, disposition, charge, delivery, contract, or payment made relating to or affecting the real or personal estate to be administered under the order, any execution or attachment had against the said real or personal estate, or any part thereof, after notice of the presentation of such petition shall be void as against the trustee. Save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done or suffered in good faith before the making of the order. 7. Applications and orders for administration of estates according to the law of bankruptcy may be in the Forms Nos. 7 and 10 in Schedule B respectively. The facts alleged in support of any application shall be verified by affidavit.

Punishment of fraudulent debtors.

Fraudulent debtors. Fraudulent creditors. Offence under Bankruptcy Ordinance. Criminal offence of a debtor. (Bankruptcy Act, 1883, § 163.) 76. 1. Any person against whom a receiving order has been made whether adjudged bankrupt or not shall in each of the cases following be guilty of a misdemeanour and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years with or without hard labour (that is to say): a) If he does not to the best

of his knowledge and belief fully and truly discover to the trustee all his property real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as may have been disposed of in the ordinary way of his trade, or laid out in the ordinary expense of his family, unless the jury is satisfied that he had no intent to defraud; b) If he does not deliver up to the trustee or as he directs all such part of his real and personal property as is in his custody or under his control and which he is required by law to deliver up, unless the jury is satisfied that he had no intent to defraud; c) If he does not deliver up to such trustee or as he directs all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless the jury is satisfied that he had no intent to defraud; d) If after the presentation of a bankruptcy petition by or against him or within six months next before such presentation he conceals any part of his property to the value of ten pounds or upwards, unless the jury is satisfied that he had no intent to defraud; e) If after the presentation of a bankruptcy petition by or against him or within six months next before such presentation he fraudulently removes any part of his property to the value of ten pounds or upwards; f) If he makes any material omission or misstatement in any statement relating to his affairs, unless the jury is satisfied that he had no intent to defraud; g) If knowing or believing that a false debt has been proved by any person under the bankruptcy or composition or scheme of arrangement he fail for the period of one month to inform the trustee thereof; h) If after the presentation of a bankruptcy petition by or against him he prevents or is party to preventing the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law; i) If after the presentation of a bankruptcy petition by or against him or within six months next before such presentation he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law; j) If after the presentation of a bankruptcy petition by or against him or within six months next before such presentation he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law; k) If after the presentation of a bankruptcy petition by or against him or within six months next before such presentation he fraudulently parts with, alters, or makes any omission in any document affecting or relating to his property or affairs; l) If after the presentation of a bankruptcy petition by or against him or at any meeting of his creditors within six months next before such presentation he attempts to account for any part of his property by fictitious losses or expenses; m) If within six months next before the presentation of a bankruptcy petition by or against him he by any false representation or other fraud has obtained any property on credit and has not paid for the same; n) If within six months next before the presentation of a bankruptcy petition by or against him he obtains under the false pretence of carrying on business and dealing in the ordinary way of his trade any property on credit and has not paid for the same, unless the jury is satisfied that he had no intent to defraud; o) If within six months of the presentation of a bankruptcy petition by or against him he pawns, pledges, or disposes of otherwise than in the ordinary way of his trade any property which he has obtained on credit and has not paid for, unless the jury is satisfied that he had no intent to defraud; p) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy. 2. If any person by or against whom a bankruptcy petition has been presented shall pending the proceedings under such petition or within six months of the presentation thereof quit Fiji and take with him, or attempts to make preparations for quitting Fiji and for taking with him, any part of his property to the amount of twenty pounds or upwards which ought by law to be divided amongst his creditors he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of a misdemeanour punishable with imprisonment for a time not exceeding two years with or without hard labour.

3. Any person shall in each of the cases following be deemed guilty of a misdemeanour and on conviction thereof shall be liable to be imprisoned for any time not exceeding one year, with or without hard labour, (that is to say): a) If in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud; b) If he has with intent to defraud his creditors or any of them made or caused to be made any gift, delivery, or transfer of, or any charge on, his property; c) If he has with intent to defraud his creditors concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him; d) If being an undischarged bankrupt he obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt. 4. If any creditor in any bankruptcy or composition with creditors under the provisions of this Ordinance wilfully and with intent to defraud makes any false claim or any proof, declaration, or statement of account which is untrue in any material particular he shall be guilty of a misdemeanour punishable with imprisonment not exceeding one year, with or without hard labour. 5. If in the course of any proceedings taken under any bankruptcy petition or upon the representation of the trustee or of any creditor it appears to the Court that there is reason to suppose that any person by or against whom the petition has been presented has been guilty of any offence under this Ordinance, the Court may order the trustee or the Superintendent of Police to prosecute such person accordingly, and in any such case the information may be laid before the Chief Police Magistrate or before the stipendiary magistrate in whose district the offence was committed and the prosecution shall, subject to the provisions of this Ordinance, proceed in the same manner as in the case of other indictable offences. 6. Where a debtor has been guilty of any criminal offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

Schedules.

Forms. 77. The Forms contained in Schedule B hereto with such variations and additions as circumstances require may be used for proceedings under this Ordinance and shall as regards the form thereof be valid and sufficient.

Fees. 78. The fees of Court mentioned in Schedule C shall be charged in respect of the various matters to which they relate, provided that the Court for good cause shown may dispense with the payment of any particular fee or fees or any part thereof upon such terms as it shall think fit. With respect to matters not mentioned in Schedule C the provisions in the Civil Procedure Rules shall be followed.

Schedules.

Schedule A. Meetings of Creditors (Sect. 14).

(This is a copy of the First Schedule of the Bankruptcy Act, 1883, except that in § 2 the word "Gazette" is substituted for the words "London Gazette", and the word "newspaper" for the word "paper." In § 26, in the concluding sentence the words "of himself" are omitted between the words "appointment" and "as trustee." This is probably a clerical error.)

Schedule B. Forms (Sect. 77).

(This Schedule contains the various forms that may be used in Bankruptcy proceedings.)

Schedule C. Scale of fees (Sect. 78).

(This Schedule gives the fees to be paid for the various proceedings, such as petitions, proofs, applications, etc.)

Bills of Exchange Ordinance, 1891.

No. 2 of 1891.¹⁾ An Ordinance to codify the law relating to Bills of Exchange, Cheques, and Promissory Notes (20th July, 1891).²⁾

Part I. Preliminary.

Short title. (Bills of exchange Act, 1882, § 1.) 1. This Ordinance may be cited for all purposes as "*The Bills of Exchange Ordinance 1891.*"

2. = Bills of Exchange Act, 1882, (45 & 46 Vict. c. 61) § 2, except that the definition of the word "note" follows the definition of the word "issue", instead of the word "bill."

Part II. Bills of exchange. Form and interpretation.

3. = Bills of Exchange Act, 1882, § 3.

Inland and foreign bills. (Bills of Exchange Act, 1882, § 4.) 4. 1. An inland bill is a bill which is or on the face of it purports to be a) both drawn and payable within the Colony of Fiji, or within Australia, Tasmania, New Zealand or British New Guinea, or b) drawn within the Colony of Fiji, or within Australia, Tasmania, New Zealand or British New Guinea upon some person resident therein. Any other bill is a foreign bill. 2. = Bills of Exchange Act, 1882, § 4, 2.

5—13. = Bills of Exchange Act, 1882, § 5—13.

Computation of time of payment. (Bills of Exchange Act, 1882, § 14.) 14. Where a bill is not payable on demand the day on which it falls due is determined as follows: 1. Three days called days of grace are in every case where the bill itself does not otherwise provide added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace; Provided that, when the last day of grace falls on Sunday or on a Bank Holiday under the "The Bank Holidays Ordinance, 1885", or any Ordinance amending it, or on a day appointed by proclamation as a day of public rejoicing or mourning the bill is due and payable on the succeeding business day. 2—4 = Bills of Exchange Act, 1882, § 14, 2—4.

15—21. = Bills of Exchange Act, 1882, §§ 15—21.

Capacity and authority of parties.

22—26. = Bills of Exchange Act, 1882, §§ 22—26.

The consideration for a bill.

27—30. = Bills of Exchange Act, 1882, §§ 27—30.

Negotiation of bills.

31—38. = Bills of Exchange Act, 1882, §§ 31—38, except that in § 31, 4, "on" is substituted for "in" before "the bill." This is an obvious typographical error. In § 34, 4. "of" is inserted before "some other person."

General duties of the holder.

39—52. = Bills of Exchange Act, 1882, §§ 39—52, except that in § 45, 2. "of" is inserted before "the facts," and in § 49, 12., (b) of the Fiji Ordinance the word "at" is substituted for the word "in" between the words "reside" and "different," and the word "such" is omitted.

Liabilities of parties.

53—58. = Bills of Exchange Act, 1882, §§ 53—58, except that in § 53 the references to Scotland are omitted.

Discharge of bill.

59—64. = Bills of Exchange Act, 1882, §§ 59—64.

¹⁾ Originally No. III of 1891. The text incorporates the amendment made by No. III of 1903. — ²⁾ Throughout the Ordinance the word "Colony" is substituted for the word "England," the word "namely" for "viz," and "Ordinance" for "Act."

Acceptance and payment for honour.

65—68. = Bills of Exchange Act, 1882, §§ 65—68.

Lost instruments.

69—70. = Bills of Exchange Act, 1882, §§ 69—70.

Bill in a set.

71. = Bills of Exchange Act, 1882, § 71.

Conflict of laws.

72. = Bills of Exchange Act, 1882, § 72, except that the word "Colony" is substituted for the words "United Kingdom."

Part III. Cheques on a banker.

73—75. = Bills of Exchange Act, 1882, §§ 73—75.

Crossed cheques.

76—82. = Bills of Exchange Act, 1882, §§ 76—82.

Part IV. Promissory-notes.

83. 1—3. = Bills of Exchange Act, 1882, § 83, 1—3. 4. A note which is, or on the face of it purports to be both made and payable within the Colony of Fiji, or within Australia, Tasmania, New Zealand or British New Guinea is an inland note. Any other note is a foreign note.

84—89. = Bills of Exchange Act, 1882, §§ 84—89.

Part V. Supplementary.

90—91. = Bills of Exchange Act, 1882, §§ 90—91.

Computation of time. (Bills of Exchange Act, 1882, § 92.) 92. Where by this Ordinance the time limited for doing any act or thing is less than three days in reckoning time non-business days are excluded. "Non business days" for the purposes of this Ordinance mean a) Sunday; b) A bank holiday under "The Bank Holidays Ordinance, 1885"; or any Ordinance amending it; c) A day appointed by proclamation as a day of public rejoicing or mourning. Any other day is a business day.

93—95. = Bills of Exchange Act, 1882, §§ 93—95, except that in § 94 of the Fiji Ordinance the numeral "1" after the word "Schedule" is omitted.

96. = Bills of Exchange Act, 1882, § 97, 1—2.

The Schedule.

(§ 94.) The form of protest is the same as that given in the Bills of Exchange Act, 1882, First Schedule, except that the words "in the Colony of Fiji" are substituted for the words "in the United Kingdom."

Sea-Carriage of Goods Ordinance, 1906.

No. XIV of 1906. An Ordinance relating to the Sea-Carriage of Goods (24th October, 1906).

Short title. (Commonwealth, 1904, No. 14, § 1.) 1. This Ordinance may be cited for all purposes as "*The Sea-Carriage of Goods Ordinance 1906.*"

2. = Commonwealth of Australia Act, 1904, No. 14, § 3.

Application of Ordinance. (Commonwealth, 1904, No. 14, § 4.) 3. 1. This Ordinance shall apply only in relation to ships carrying goods from any place in the Colony to any place outside the Colony and in relation to goods so carried or received to be so carried in such ships. 2. This Ordinance shall not apply

to any bill of lading or document made in pursuance of a contract or agreement entered into before the commencement hereof.

4. = Commonwealth Act, 1904, No. 14, § 5, except that in subsection (b) the words are "in anywise weakened, lessened or avoided," instead of "in anywise lessened, weakened or avoided."

5. = Commonwealth Act, 1904, No. 14, § 6, except that the word "Colony" is substituted for "Australia," and that the words "or of a State" contained in the Commonwealth act are omitted.

Penalties. (Commonwealth, 1904, No. 14, § 7.) 6. The owner, charterer, master or agent of a ship who shall a) insert in any bill of lading or document any clause, covenant or agreement declared by this Ordinance to be illegal; or b) make, sign, or execute any bill of lading or document containing any clause, covenant, or agreement declared by this Ordinance to be illegal shall be liable on summary conviction to a penalty not exceeding one hundred pounds.

7. = Commonwealth Act, 1904, No. 14, § 8, except that 2. d) the word "the" is omitted before "goods."

British Possessions and Protectorates in the Pacific Ocean.

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Name of report.	No. of vols.	Period.	Method of citation.
Fiji Law Reports.	1	1875—1897.	Fiji L. R.

Introduction.²⁾

The limits of the Pacific Order in Council, 1893, are the Pacific Ocean and the islands and places therein, including: 1. Islands and places which are for the time being British settlements; 2. Islands and places which are for the time being under the protection of Great Britain; 3. Islands and places which are for the time being under no civilised government; but exclusive (except as in the order expressly provided) of: 1. Any place within any part of the British dominions or the territorial waters thereof, which is for the time being within the jurisdiction of the legislature of any British possession; 2. Any place for the time being within the jurisdiction or protectorate of any civilised power. In islands and places which are not British settlements, or under the protection of Great Britain, the exercise of jurisdiction, except only as in the Order otherwise expressly provided is confined to British subjects and to such foreigners or natives as by reason of being or having been on board a British ship or otherwise have come under a duty of allegiance to Great Britain, and their property and personal and proprietary rights and obligations. The Pacific Order in Council, 1893, applies to: 1. The groups of islands with the dependencies and territorial waters thereof known as the Tonga Islands, the Union Islands, the Ellice Islands, the Gilbert Islands, the British Solomon Islands, and the Santa Cruz Islands; 2. Any seas, islands, and places, not excluded as above, and situate in the Western Pacific Ocean within the following limits: North, from 140° east longitude by the parallel 12° north latitude to 160° west longitude, thence South to the equator, and thence east to 149° 30' west longitude; East by the meridian of 149° 30' west longitude. South by the parallel 30° south latitude; West by the meridian 140° east longitude³⁾.

History and government.⁴⁾

For the better enforcement of the Pacific Islanders' Protection Acts, 1872 and 1875, and to provide a civil court for the settlement of disputes of British subjects residing in these islands the office of High Commissioner in, over, and for the Western

¹⁾ See also the Bibliography to special groups, *infra*. — ²⁾ The writer desires to express his indebtedness to the Honorable Arthur Mahaffy, Assistant High Commissioner for the Western Pacific, for copies of the legislative enactments of the islands within the jurisdiction of the High Commissioner, and for other valuable information concerning the laws in force therein, and to R. Skeen, Esq., Chief Justice of Tonga, for valuable assistance in the preparation of the report on the law of Tonga. — ³⁾ Pacific Order in Council, 1893, §§ 4—6. — ⁴⁾ For the history and government of the several protectorates see *infra*, under the particular groups.

Pacific Islands was created by the Western Pacific Order in Council, 1877. British jurisdiction is now exercised under the Pacific Order in Council, 1893, (15th March, 1893)¹⁾, as amended by the Orders in Council of 26th November, 1897, 20th May, 1903, 6th July, 1907, (No. 542), 6th July, 1907, (No 543), 2d November, 1907, and 22d April, 1910. The administration is in the hands of a High Commissioner and a number of deputy commissioners and residents. The legislative power is vested in the High Commissioner²⁾.

Law in force.

Subject to the provisions of the Order in Council or of any treaty, or local enactment, the law for the time being in force in England is in force in so far as applicable to local conditions³⁾.

Courts and procedure.

The Chief Justice and every other Judge for the time being of the Supreme Court of Fiji is by virtue of his office a Judicial Commissioner for the Western Pacific⁴⁾. The principal Court is the High Commissioner's Court for the Western Pacific, which is a superior Court of record, and a Court of law and equity⁵⁾. Each member of the High Commissioner's Court exercising for the time being the jurisdiction thereof is deemed to form the High Commissioner's Court. The jurisdiction may be exercised within any place subject to the Order, or in Fiji⁶⁾.

The Supreme Court of Fiji exercises appellate jurisdiction over the High Commissioner's Court, and may also exercise original jurisdiction to hear and determine in Fiji any civil or criminal cause arising at any place within the limits of the Order, and may proceed either according to the procedure for the time being in use in Fiji or according to the procedure under this Order⁷⁾.

The High Commissioner's Court is a Court of Bankruptcy, and as such has, as far as circumstances admit, with respect to persons subject to the jurisdiction of the Court and to their debtors and creditors, all such jurisdiction as, for the time being, belongs to any judicial authority having for the time being jurisdiction in bankruptcy in England⁸⁾. The Court is also a Court of Admiralty under the Colonial Court of Admiralty Act, 1890⁹⁾, and a Court of probate¹⁰⁾, and divorce¹¹⁾, and exercises the jurisdiction of the Lord Chancellor in England in regard to the custody of the persons and estates of idiots and lunatics¹²⁾.

Where in a place that is not a British settlement or under the protection of Great Britain, a foreigner desires to institute or take a suit or proceeding of a civil nature against the British subject, or a British subject desires to institute or take a suit or proceeding of a civil nature against a foreigner, the Court may entertain the suit or proceeding, and hear and determine it (and if all parties desire, or the Court directs a trial with assessors, then with assessors) at the place where such a trial might be had if all parties were British subjects, and in all other respects according to the ordinary course of the Court. Provided that the foreigner: 1. files in the Court his consent to the jurisdiction of the Court, and 2. also, if required by the Court, obtains and files a certificate in writing from a competent authority of his own government, to the effect that no objection is made by that government to the foreigner submitting in the particular cause or matter to the jurisdiction of the Court, and 3. if required by the Court, gives security to the satisfaction of the Court, to such reasonable amount as the Court directs, to pay fees, costs, damages, and expenses, and to abide by and perform the decision to be given by the Court or on appeal. A counter-claim or cross-suit can not be brought or instituted in the Court against a plaintiff, being a foreigner, who has submitted to the jurisdiction, by a defendant, except by leave of the Court first obtained. The Court, before giving leave, requires proof from the defendant that his claim arose out of the matter in dispute, and that there is reasonable ground for it and that it is not made for vexation and delay. This does not prevent the defendant from instituting or taking in the Court against the foreigner, after the termination of the suit or proceeding in which the foreigner is plaintiff, any suit or proceeding that the defendant

¹⁾ Stat. R. & O. Rev. 1904, Vol. 5, "Foreign Jurisdiction," p. 484. — ²⁾ Pacific Order in Council, 1893, § 108. — ³⁾ Ibid. §§ 20, 22, reprinted in full, *infra*. — ⁴⁾ Ibid. § 8. — ⁵⁾ Ibid. § 12. — ⁶⁾ Ibid. § 14. — ⁷⁾ Ibid. § 15. — ⁸⁾ Ibid. § 36. — ⁹⁾ 53 & 54 Vic. c. 27. — Ibid. § 37. — ¹⁰⁾ Ibid. §§ 28—46. — ¹¹⁾ Ibid. § 47. — ¹²⁾ Ibid. § 48.

might have instituted or taken in the Court against the foreigner if no provision restraining counter-claims, or cross suits, had been made. Where a foreigner obtains in the Court an order against a defendant, being a British subject, and in another suit that defendant is plaintiff and the foreigner is defendant, the Court may, if it thinks fit, on the application of the British subject, stay the enforcement of the order pending that other suit, and may set off any amount ordered to be paid by one party in one suit against any amount ordered to be paid by the other party in the other suit. Where a plaintiff, being a foreigner, obtains in the Court an order against two or more defendants, being British subjects, jointly, and in another suit one of them is plaintiff and the foreigner is defendant, the Court may, if it thinks fit, on the application of the British subject, stay the enforcement of the order pending that other suit, and may set off any amount ordered to be paid by one party in one suit against any amount ordered to be paid by the other party in the other suit without prejudice to the right of the British subject to require contribution from his co-defendants under the joint liability. Where a foreigner is co-plaintiff in a suit with a British subject who is within the particular jurisdiction, it is not necessary for the foreigner to make deposit or give security for costs unless the Court so directs; but the co-plaintiff British subject is responsible for all fees and costs¹).

An appeal lies in civil cases from the High Commissioner's Court to the Supreme Court of Fiji, sitting as a Court of Appeal, either by leave of the Court whose judgment is appealed against or by leave of the Court of Appeal²). From the Court of Appeal an appeal lies to the Privy Council³), subject to the conditions governing appeals from Fiji⁴).

Statutes.⁵)

Application of Law.

Order in Council. The Pacific Order in Council, 1893 (15th March, 1893).

Exercise of civil and criminal jurisdiction in conformity with English law and procedure. 20. Subject to the other provisions of this Order, the civil and criminal jurisdiction exercisable under this Order shall, so far as circumstances admit, be exercised upon the principles of and in conformity with the substance of the law for the time being in force in and for England, and with the powers vested in and according to the course of procedure and practice observed by and before Courts of justice and justices of the peace in England, according to their respective jurisdictions and authorities.

What acts to be deemed crimes and offences. 21. Except as to crimes or offences made or declared such by this Order, or by any regulation or rule made under it, any act other than an act that would by a Court of Justice having criminal jurisdiction in England be deemed a crime or offence, making the person doing such act liable to punishment in England, shall not, in the exercise of criminal jurisdiction under this Order, be deemed a crime or offence, making the person doing such act liable to punishment.

Effect of treaty stipulations. 22. The provisions of any treaty with Her Majesty or Her successors for the time being in force with respect to any place within the limits of this Order shall have effect as part of the law to be enforced under this Order in relation to such place, and in case of inconsistency between such provisions and the law in force in England, or anything contained in this Order, effect shall be given to such provisions.

Punishment of crimes, etc., against natives and foreigners. 23. Crimes, offences, wrongs, and breaches of contract against or affecting the person, property, or rights of natives or foreigners, committed by persons subject to this Order, are, subject to the provisions of this Order, punishable or otherwise cognisable, in the same

¹) Ibid. § 109. — ²) Ibid. § 88. — ³) Ibid. § 88. — ⁴) See *supra*, under Fiji. — ⁵) As in force, 14th March, 1912.

manner as if they were committed against or affected the person, property, or rights of British subjects.

Credit Trade.

No. 2 of 1896. For the Protection of Natives entering into Contracts (26th June, 1896).¹⁾

Interpretation. 1. In this Regulation the word "native" shall mean aboriginal native of any island in the Pacific not being a trader.

No action to be brought against natives. 2. No action shall be brought in the High Commissioner's Court against any native in respect of any contract entered into after the coming into force of this Regulation.

Native may bring action for recovery of money paid. 3. If a native enters into a contract with a non-native person (subject to the jurisdiction of the High Commissioner's Court), such native, whether he has fully performed his part of the contract or not, may, with the leave of the Court, bring an action for the recovery of any money paid, and for the value of any work done or goods or produce supplied, and the Court shall give judgment for the same subject to the deduction herein after provided. The Court may deduct a quantum meruit for the performance by the non-native party of so much of his part of the contract as he has actually performed. If the Court is of opinion that the contract is a fair and reasonable one, and that it has not been carried out owing to the default of the native party, the Court may deduct a sum by way of damages for breach of contract. No contract shall be deemed reasonable if it is one which the native party would in the ordinary course of events have difficulty in performing.

Contracts for repairs to vessels. 4. It shall be lawful for any person to enter into a contract with a native for the repair of a boat or vessel with the proviso that such boat or vessel may be detained until the repairs are paid for. Provided that such native is either the owner of such boat or vessel or has proper authority to enter into such contract. And in the event of an action being brought in the High Commissioner's Court for the delivery of any such boat or vessel, the Court may order the payment by the native party of the value of the repairs done as a condition precedent to the return of such boat or vessel. If any such native is a person subject to the jurisdiction of the High Commissioner's Court, the other party may apply to the Court for an order for the sale of the boat or vessel, and the Court may order that if by a certain date the value of the repairs be not paid the boat or vessel shall be sold, and the amount due for repairs and costs shall be deducted from the proceeds and paid to the party executing such repairs. If the proceeds are not sufficient to meet the amount due no proceedings for the recovery of the balance shall be taken against the native party.

Court may inquire into adequacy of consideration. Short title. 5. Notwithstanding any agreement to the contrary the Court may in any proceedings under this Regulation inquire into the adequacy of the consideration moving from the non-native party.

This Regulation may be cited as the *Native Contracts Regulation, 1896*.

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¹⁾ Specifically extended to Ocean Island, otherwise Paanopa. — Reg. No. 1 of 1902. —

²⁾ An English version of the preceding work.

Introduction.

The Tonga or Friendly Islands consist of three groups of islands called respectively Tonga, Haapei, and Vavau, lying between the 15th and 24th degrees S. lat. and 173d and 177th W. long., the western boundary being the eastern boundary of Fiji.

History and government.

In accordance with the Declaration of Berlin, 6th April, 1886, Tonga continued up to 1899 to be a neutral region. By the Anglo-German Agreement of 14th November, 1899, subsequently accepted by the United States, the Tonga Islands were left practically under the protectorate of Great Britain. A protectorate was proclaimed 19th May, 1899. In December, 1904, Great Britain assumed control of the legal and financial administration of the islands.

The native administration is carried on by a King, assisted by a privy council. The legislative power is vested in a legislative assembly, which meets every three years and is composed one-half of hereditary nobles, who hold office for life, and one-half of representatives elected by the people¹⁾. During the periods when the assembly is not in session ordinances and regulations may be adopted. These have the full force of law, but must be submitted to the next assembly for approval.

Law in force.

British and foreign subjects are subject to the jurisdiction of the Tongan Courts only for offences relating to customs, taxes, quarantine, and local police, not recognized as offences against British law. In other matters they are governed by the law generally in force in the Western Pacific²⁾.

Courts and procedure.

The jurisdiction of Great Britain in Tonga extends to the hearing and determination of all claims of a civil nature against the citizens or subjects of any foreign power³⁾, and is exercised in conformity with the Pacific Orders in Council.

The native judicial system of Tonga comprises a Supreme Court and District Court and Police Court⁴⁾. The Supreme Court consists of a Chief Justice and two Associate Justices, but each Justice may exercise the powers of the Court⁵⁾. The Supreme Court has jurisdiction in all cases at law or in equity arising under the constitution and laws of the Kingdom, and in all matters concerning treaties with foreign states, and over public ministers and consuls, and in all maritime cases⁶⁾. The Supreme Court has original jurisdiction in all cases where the amount claimed exceeds \$ 250, and appellate jurisdiction from the Police Court⁷⁾. There may be a jury trial in civil cases, a three-fourths verdict being sufficient⁸⁾. There is no appeal, except by petition to the King in Council. The King on the advice of his Council may order a case to be tried again before another justice⁹⁾. The Police Court has civil jurisdiction where the amount claimed does not exceed \$ 250¹⁰⁾.

Claims for debt or damages are barred after the expiration of five years from the date of the accrual of the liability¹¹⁾.

Statutes.¹²⁾

Laws of 1903.

Breach of contract actionable. 272. Notwithstanding the provisions of the last preceding section it shall be lawful for any person whether European, Asian,

¹⁾ *Statesman's Year-Book*, 1910, p. 345; *Colonial Office List*, 1910, pp. 400, 401. — ²⁾ *Colonial Office List*, 1910, p. 401. — ³⁾ Treaty of Nukualofa, 18th May, 1900, art. 9. Germany renounced her rights of extraterritoriality in favour of Great Britain by the Treaty of London, 14th November, 1899. — ⁴⁾ Constitution of Tonga, § 86; Statutes 1903, § 156. — ⁵⁾ Constitution, § 87; Statutes, § 158. — ⁶⁾ Constitution, § 92; Statutes, § 163. — ⁷⁾ Statutes, §§ 164, 222, 258. — ⁸⁾ *Ibid.* §§ 202, 204. — ⁹⁾ *Ibid.* § 208. — ¹⁰⁾ *Ibid.* §§ 222, 258. — ¹¹⁾ *Ibid.* § 273. — ¹²⁾ As in force 1st January, 1912.

or Pacific Islander to sue any person for a breach of any written contract countersigned by a Police Magistrate in the form laid down in Chapter XXIII.

Handwriting. 283. A written contract countersigned by a Magistrate and handwriting whether signed or unsigned shall if the Court is satisfied that it is genuine be taken as evidence.

Contracts with natives. 284. Notwithstanding the provision of the last preceding section no written undertaking by a Pacific Islander to pay money to an European or Asian shall be admissible as evidence unless countersigned by a Magistrate in accordance with Chapter XXIII.

Public holidays. 533. 1. Seeing that upon the fourth day of June in the year one thousand eight hundred and sixty-two the people of Tonga became free, therefore shall that day be observed as public holiday every year for ever as a remembrance of the freedom of Tonga, and whenever the fourth day of June shall fall upon a Sunday the next day following shall be observed as a public holiday. 2. Seeing that the Constitution was granted by His Majesty King George Tubou upon the fourth day of November in the year One thousand eight hundred and seventy-five, therefore shall the fourth day of November in every year be observed as a public holiday. 3. Seeing that on the seventeenth day of March one thousand eight hundred and ninety-three His Majesty King George Tubou II. was crowned King therefore that day shall in every year be observed as a public holiday and the Government shall give a fête on that day in every year.

See also Regulation of 1906, *infra*.

Form of written contract. 677. Should any person agree to perform a service for or supply goods to another for which remuneration is agreed upon the persons so agreeing shall draw up a written agreement in duplicate in the Tongan language stating clearly: 1. The nature of the service. 2. The remuneration. 3. The date the service is to be completed. 4. The date on which the payment is to be completed.

See Ord. No. 13 of 1910, *infra*. The goods must be specifically named.

Magistrate to countersign. 678. Both persons shall sign such agreement in the presence of a Magistrate who shall then if he thinks the conditions can be fulfilled by both parties countersign and date such agreement and retain one copy delivering the other copy to the parties to the agreement.

Registration fee. 679. The fee for registering an agreement with a Magistrate shall be one shilling (1/).

No action to lie for breach of unregistered contract. 680. It shall not be lawful to sue any person in any Court in the Kingdom for the breach of any agreement unless such agreement has been duly signed by a Magistrate.

Magistrate to have discretion. 681. It shall be lawful for any Magistrate to refuse to sign and register any agreement if the terms of such agreement shall seem to him to be in contravention of any existing law, or if the agreement shall appear to him to be beyond the power of either of the parties to perform.

Explanation. A, a European, contracted to build a house for B, a Native, for which B was to pay two hundred dollars within three months. If the Magistrate considers that B cannot raise that sum within three months, he may refuse to countersign the contract.

Purchase of vessels. 682. In the case of a contract to supply a vessel to natives proof shall be given to the satisfaction of the Magistrate that at least half the purchase money has been collected and is in the hands of a responsible person before he shall countersign the contract.

Breach of registered contract. 683. Should either party to an agreement countersigned by a Magistrate fail to perform his share of such agreement he may be sued in the Civil Court for breach of agreement and costs and should such breach of agreement consist in not completing work agreed upon the Magistrate may order him to pay to the plaintiff a sum sufficient to defray the costs of the completion of such work by another together with the costs of the suit.

Credit Trade.

a) Amending the Law re Debts.¹⁾

1. Section 271 of the Law of Tonga, 1903, is hereby repealed, and from this date it shall be lawful for Europeans to sue Tongans for debt.

¹⁾ *Government Gazette*, 16th July, 1906.

2. Section 422 of the Law of Tonga, 1903, is amended by repealing the proviso to this section, which proviso reads as follows: "Provided that nothing in this section shall apply to goods supplied by an European to a native on credit."

b) No. 13 of 1910. An Ordinance to amend the Law relating to Debt.¹⁾

1. Notwithstanding anything in the Law of Tonga, 1903, or in the amending Law of 1906 re Debt, it shall not be lawful for any trader or storekeeper or commission agent or anyone holding a license under chapters 24, 25, and 26 of the Law of Tonga, 1903, to sue for debt any Tongan or South Pacific Islander for goods obtained upon credit.

2. This Ordinance shall not apply to suing or relieve from payment any person trading or holding a trading license who shall have obtained goods upon credit for the purposes of his business or in connection therewith.

3. This Ordinance does not render or make the Law of Contracts, chapter 23 of the Law of Tonga, 1903, in any way inoperative, under which chapter goods are required to be specifically named in the agreement.

See Law of 1903, 677—680, reprinted *supra*.

4. This Ordinance shall come into force from the thirtieth day of June, 1910.

Companies.

No. 7 of 1911. An Ordinance regulating Companies.²⁾

1. No company, association, or partnership consisting of more than ten persons shall be formed for the purpose of carrying on any banking or other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, or for any other trading or cooperative purpose, unless it is registered in the office of the Auditor-General of the Tongan Government as a company.

2. No already existing company, association, or partnership, of more than ten persons carrying on any banking business or other business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, or for any other trading or cooperative purpose, shall continue to carry on business, unless it is registered in the office of the Auditor-General of the Tongan Government as a company within three months of the date of this Ordinance coming into force.

3. Any ten persons, or more, associated for any lawful purpose, may, by subscribing their names to a memorandum of association and otherwise complying with this Ordinance in respect of registration form a company.

4. The memorandum of association shall be in the form set out in the Schedule hereto.

5. Before any company is registered the memorandum of association and articles of association shall be submitted to the Privy Council for approval, and the Privy Council shall have power to approve, modify or reject the same.

6. Before any company is registered there shall be produced to the Auditor-General the memorandum of association and the articles of association, signed by the subscribers to the memorandum and approved by the Privy Council. And upon registration the same shall be filed in the office of the Auditor-General.

7. The fee payable to the Tongan Government for the certificate of registration shall be five pounds.

8. From the date of such certificate of registration as is mentioned in clause 7 hereof the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name mentioned in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, having power to sue and be sued by the name mentioned in the memorandum of association, and having perpetual succession and a common seal.

¹⁾ Ibid. 19th April, 1910. — ²⁾ *Government Gazette*, 3d October, 1911.

9. The books and accounts of any company shall be audited at least once in every year by the Auditor-General, with such assistance as he may require, and also at such other times as the Privy Council may in its discretion order. Such audit shall be made in time for the Auditor's report to be laid before the annual general meeting.

10. Such remuneration as shall be agreed upon by the company and the Privy Council shall be paid by the company to the Auditor-General for each audit and report.

11. The articles of association shall provide, inter alia, for an annual general meeting of shareholders or subscribers and the preparation of a balance sheet in time to be laid before such annual general meeting.

12. The Privy Council may at any time appoint one or more persons to investigate the affairs of any company and to report thereon as the Council may direct, and the Privy Council may, after such investigation, order the suspension of or the winding-up of any company under the supervision of the Supreme Court of Tonga, or otherwise as it may direct.

13. The provisions of this Ordinance shall not apply to companies already registered outside the Kingdom of Tonga, but such companies shall, within six months from the date of this Ordinance coming into force, file in the office of the Auditor-General copies of their memorandum of association or articles of association.

[14. Repeals Ords. No. 17 of 1910 and No. 4 of 1911.]

15. Any company, association, or partnership carrying on business and not complying with the provisions or any provision of this Ordinance shall be liable, upon conviction, to a fine of ten pounds, or less, per day for each day after default has been made.

Schedule.

Memorandum of association of the

Company, Limited.

1. The name of the company is
2. The registered office of the company will be situated in Tonga.
3. The objects for which the company is established are:
4. The liability of the members is limited.
5. The share capital of the company is £ , divided into shares of each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Name	Addresses	Description of subscribers	No. of shares taken by each subscriber
1.			
2.			
3. etc.			
			Total shares taken

Dated the day of 19

Witness to the above signatures.

Public Holidays.

Regulation. Public Holidays.¹⁾

By Regulation the following days are declared public holidays, in addition to those mentioned in Law of 1903, § 533:

New Year's Day, Coronation Day of King George Tubou II (17th May), Good Friday, Easter Monday, Birthday of the Prince of Wales, Independence of Tonga (4th June), Birthday of King George Tubou II (18th June), Constitution of Tonga Day (4th November), Birthday of His Britannic Majesty, Christmas Day, Boxing Day (26th December).

¹⁾ *Government Gazette*, 6th April, 1906.

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Collections of Laws.

Native laws of the Gilbert Islands. Suva. 1894.

The Gilbert and Ellice Islands Protectorates include for administrative purposes the Ellice and Gilbert groups, a series of atolls lying between the 5th degree N. lat. and 10th degree S. lat. and the 170th and 180th degree of E. long., the Union group consisting of three small islands, Fakaafu, Oatafu, and Nukunono, situated about the 9th degree S. lat. and the 172d degree W. long., and Ocean Island, or Paanopa, in lat. $0^{\circ} 52'$ S., long $169^{\circ} 35'$ E. The natives are ruled by their own kings or chiefs with the assistance of native councils. All of the groups are under British protection. Courts of law have been established among the natives. British and foreign subjects are governed by the general law as administered in the Western Pacific¹).

III. British Solomon Islands.

The British Solomon Islands consist of the Southern islands of the Solomon group, namely, Shortland Island, Choiseul, Isabel, New Georgia, Guadalcanar, Malaita, San Christoval, Bellona, and Rennell Islands, together with Ongtong-Java, and certain small islands in the vicinity of the main group, all lying between the 7th and 13th degrees of S. lat., and the 150th and 163d degrees of E. long. A British protectorate was established in 1893. By the convention between Great Britain and Germany (14th November, 1899) Choiseul, Isabel, Shortland Island, and the islands lying in the Bougainville Straits came within the British sphere. The Santa Cruz Islands are annexed to the Solomon Islands Protectorate for administrative purposes. The government of the natives is in the hands of native chiefs assisted by native councils. There is a British Resident Commissioner, with headquarters at Tulagi, and British magistrates in certain on the islands. The islands are under the jurisdiction of the High Commissioner for the Western Pacific¹).

IV. Pitcairn Island.²⁾

Bibliography.

Collections of Laws.

Laws and regulations of Pitcairn Island. (In Parl. Papers, C. 9148, 1899.)

Introduction.

Pitcairn Island includes for administrative purposes the islands of Henderson, Ducie, and Oeno. Pitcairn Island was discovered by Carteret in 1767, but remained

¹) *Colonial Office List*, 1910, p. 401. — ²) See further as to the history and political conditions of Pitcairn Island: Parl. Papers, C. 2160, 1857 (Sess. I.); Parl. Papers, C. 2242, 2243-

uninhabited until 1780. In that year the mutineers of H. M. S. "Bounty" settled in the island with some women from Otaheite, but nothing was known of this settlement until 1808. In 1856 the inhabitants (then 192 in number) were removed to Norfolk Island, but within a few years a number of them had returned.

A code of laws appears to have been drawn up by Commendar Elliott of H. M. S. "Fly" in 1838. On principle it would seem that the Island having been acquired by settlement, the English law as it existed in 1780, in so far as applicable to local conditions, and not superseded by local laws, is in force.

There is a local Parliament elected annually; all men and women over twenty-one years of age are entitled to vote for representatives. The Chief Magistrate combines the functions of Executive and Judge¹).

Pitcairn Island was brought into the jurisdiction of the High Commissioner for the Western Pacific in 1898, under section 6 of the Pacific Order in Council, 1893.

V. New Hebrides.

Bibliography.

Regulations.

Joint regulations. Pamphlets. Suva.

Introduction.

The New Hebrides comprise the Espiritu Santo, Mallicolo, Api or Tasiko, Efati or Sandwich, Eromanga, Aipera or Tanna, Futuna or Erronan, and Aneityum Islands, and the Banks and Torres Islands. They lie between the 12th and 20th degrees of S. lat., and the 165th and 170th degrees of E. long²).

History and government.

By a convention made in 1887 a Joint Naval Commission of British and French officers was created³). The New Hebrides are included in the Pacific Order in Council, 1893. In 1902 British and French residents were appointed, and in February, 1906, a conference of British and French officials took place in London, and a draft convention was prepared. A convention embodying this draft was signed in London 20th October, 1906, and provisionally proclaimed at Vila on 2d December, 1907. The convention provides that the signatory powers shall be represented by two

1857 (Sess. II.); Parl. Papers, H. C. 297, 1863; *Correspondence relating to the condition of the Pitcairn islanders*, Parl. Papers, c. 9148, 1899; *Further correspondence relating to the condition of the Pitcairn Islanders*, Parl. Papers, Cd. 754, 1901; *Pitcairn Island, Report by Mr. R. T. Simons*, Parl. Papers, Cd. 2397, 1905; *Aleck and the mutineers of the "Bounty,"* Barrow, *History of the mutiny of the "Bounty,"* Beechey, *Voyage to the Pacific*; Belcher, *The mutineers of the "Bounty,"* Brodie, *Pitcairn Island*; Meinicke, *Die Insel Pitcairn*; Meinicke, *Die Inseln des Stillen Oceans*; Murray, *Pitcairn*; Shillibeer, *The Britains's voyage to Pitcairn Island*.

¹) The Magistrate is to preside on all public occasions, and if any case should be brought to his notice he is to hear both sides to the question, and to decide and pass judgment accordingly; and should his judgment be objected against, he is to call his Councillors to his assistance, and should their decision be objected to he is to call a jury of heads of families to whose decisions the parties are to abide until the arrival of the first British ship of war, to whose commander the case is to be submitted and from whose decision there is no appeal. Also the authority of enacting laws are invested into his hands, and to see all laws properly supported and all fines duly executed, and to summon others to assist him in enforcing his authority. Also he can punish in trivial matters of all descriptions, when done or tend to evil at his will. — Laws and regulations of Pitcairn Islands, in Parl. Papers, p. 9148, 1899, pp. 7, 8. — ²) *Statesman's Year-Book*, 1910, p. 347. — ³) *Colonial Office List*, 1910, C. 402.

High Commissioners, one appointed by each of the powers. The High Commissioners are to be assisted by Resident Commissioners. Certain public services, such as police, posts and telegraphs, public works, ports and harbours, public health, are to be undertaken in common. The High Commissioners have power to issue jointly, for the peace, order, and good government of the group, local regulations binding on all the inhabitants of the group. The subjects and citizens of Great Britain and France are to enjoy equal rights of residence, personal protection, and trade, each of the two signatory powers retaining jurisdiction over its citizens or subjects. The subjects or citizens of other Powers are given the same rights and are subject to the same regulations as British subjects or French citizens. They must choose within six months between the legal system of the two powers. Failing such choice the High Commissioners or their delegates may decide under which system they shall be placed. In matters not covered by the Convention or the regulations made thereunder the citizens and subjects of the two signatory powers or of other powers remain subject to the laws of their respective countries. The manners and customs of the natives, where not contrary to the maintenance of order and the dictates of humanity, must be respected¹).

Law in force.

The principles laid down in the Convention of 20th October, 1906, govern in land disputes. In other civil cases the law of the country to which the non-native party belongs or the legal system made applicable to him is applied. In suits between non-natives brought before the Joint Court the law applicable to the defendant shall be applied. In suits between natives before the Joint Court the Court shall decide according to substantial justice respecting as far as possible, the native customs and the general principles of law²).

Courts and procedure.

The Convention of 1906 provides for the establishment of a Joint Court. The Court is to consist of two Judges, of whom one shall be president. The Joint Court has jurisdiction in civil (including commercial) cases over all suits respecting land in the group, in suits of every kind between natives and non-natives, and in all cases where the parties consent to the exercise of jurisdiction. The procedure in civil cases follows the procedure in the County Courts in England and the Court of Justices of the Peace in France. The judgments of the Joint Court are final³).

The two governments undertook under the terms of the convention to establish, in conformity with their existing legal system, Courts with jurisdiction over all civil suits not within the jurisdiction of the Joint Court⁴).

Statutes.⁵

Application of Law.

a) Convention between the United Kingdom and France concerning the New Hebrides (20th October, 1906).

Art. 13. The law applied shall be: 1. In civil (including commercial) cases: A) For land disputes, the principles laid down by the present Convention; B) For other disputes, the law of the country to which the non-native party belongs or the legal system made applicable to him. 2. In police and criminal cases: The law applicable to the non-native party injured. 3. In the case of other offences: The principles laid down by the present Convention, or by the regulations framed for the purpose of carrying it out.

¹) Convention, 20th October, 1906, arts. 1, 2, 4, 7, 8. — ²) Ibid. arts. 13, 21. — ³) Ibid. arts. 10, 12, 15, 21. — ⁴) Ibid. 22. — ⁵) As in force 1st January, 1912.

b) Order in Council (2d November, 1907).¹⁾

9. Subject to the provisions of the aforesaid Convention, amended as aforesaid, and of this Order, the Order of Her late Majesty, Queen Victoria, known as the Pacific Order in Council, 1893, as amended by the Pacific Order in Council, 1907, shall (save and except article 109 of the said Order of 1893) apply to the New Hebrides as if the same were herein incorporated, and shall be binding upon all persons over whom His Majesty has jurisdiction within the said Islands. The order of His Majesty in Council known as the Pacific Islands Civil Marriages Order in Council, 1907, shall in like manner apply to and have effect within the New Hebrides.

VI. Miscellaneous Islands.

There are a number of islands and rocks in the Pacific Ocean, which belong to Great Britain, but are not included in any colony or protectorate. Many are uninhabited, others have only a few permanent inhabitants. The chief industry is the collection of guano and the planting of cocoanut trees. Some of the islands are used as cable stations²⁾. Where within the limits of the Pacific Order in Council, 1893³⁾, these islands are subject to the jurisdiction of the High Commissioner. Among the principal of these islands are Fanning Island (3° 51' N. lat., 159° 22' W. long.) used as a cable station, and the residence of a Deputy Commissioner, and the Phenix Group.

¹⁾ This order was brought into force by Proclamation of the High Commissioner on 1st December, 1907. — ²⁾ The Cook Islands, and Palmerston, Penrhyn, Suwarrow, and Rierson Islands are annexed to New Zealand, Norfolk Island and Lord Howe Island are administered by the Government of New South Wales. — ³⁾ §§ 4—6.

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